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VIVĀDACHINTĀMAṆI

ENGLISH TRANSLATION

THE
VIVĀDACHINTĀMAṆI
OF
VĀCHASPATI MISHRA

Translated into English by

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NOTE

This translation had been completed in December, 1936; but the printing was still incomplete when my father died in November, 1941. I have seen the book through the press, with the valued assistance of Dr. Umesha Mishra, who has also written the Introduction.

AMARANATHA JHA,

September 13, 1942

Vice-Chancellor,
Allahabad University.

VIVĀDACINTĀMAṆI AND ITS AUTHOR.

By Dr. Umesha Mishra, M.A., D.Litt., *Allahabad University.*

Introductory.

The following pages embody a translation into English of one of the most important works of Vācaspati Mishra—the Junior, on Hindu Law, both Civil and Criminal, by an encyclopædic scholar who was a great teacher of the various schools of Indian Philosophy, and the greatest modern authority in all matters connected with Pūrva-Mīmāṃsā. The correct interpretation of Dharma-Shāstra treatises or law-digests is possible only with the help of Pūrva-Mīmāṃsā. Our studies in this field clearly indicate that a *Dharmashāstrin* should necessarily be well versed in Pūrva-Mīmāṃsā and Nyāya-Vaisheṣika. In fact, without a thorough knowledge of these two systems of thought no one has any right to speak on matters connected with Hindu Law. The principles of Pūrva-Mīmāṃsā are the only infallible guide for explaining the problems of Hindu Law. It is, therefore, in the fitness of things that the great savant of Pūrva-Mīmāṃsā had been entrusted with the task of translating this digest especially when we find that the misunderstanding of the correct interpretation of the Mīmāṃsā principles is responsible for leading our lawyers into error.

In Indian literature, the word *Dharma-Shāstra* is used for Hindu Law. It is, therefore, necessary that we should understand very clearly the meaning of the term '*Dharma*'. From the various references of the term '*Dharma*' in Vedic literature it is clear that it stands for '*Duty*' in general. In later Sanskrit literature also, there is no better expression than '*Duty*' to denote the correct connotation of the term—'*Dharma*'. Thus, there is no activity of our life, whether physical, or mental, or spiritual, which cannot come within the jurisdiction of '*Dharma-Shāstra*'; and it is, therefore, that this branch of learning embraces all aspects of Hindu life. Hence, every action of our life, howsoever insignificant it may be, is looked upon from the point of *Dharma-Shāstra*. In other words, the works on *Dharma-Shāstra* or Hindu Law treat of life or society as *one organic whole*, and guide it in all its aspects. It is, therefore, that we find that our 'Law Books' deal with, more or less, homogeneous subjects, such as, Philosophy, Cosmology, Theology, Citizenship, Kingship. Each of these subjects is so vast that though in the older texts, namely, *Manu, Yājñavalkya*, etc., almost all the subjects have been more or less dealt with, yet with the expansion of society it became necessary to work out in detail all possible aspects of each of these subjects in order to meet with their growing demands. This is perhaps the reason which led the later scholars to concentrate their attention on, more or less, specialised work and write separate treatises of digests on the different aspects of our life and society. These various digests, although based on the old Smṛtis, have superseded them in such a

way that no one now cares to consult the old Smṛtis on any point. In fact, people go even so far as to reject the authentic character of a particular Smṛti text simply because it has not been quoted in the digests.

Then, again, in a vast country like India, geographical conditions and climatic changes have had so many varying influences on the social, religious and economic life of her people that there exist differences not only in societies but also in the laws regulating those societies. This is perhaps the reason why our law books recommend certain practices for one part of the country while they prohibit the same for another. It was perhaps due to these natural influences, over which no one has any control, that both the Smṛtikāras and the digest-writers recognised *Sadācāra* (*Practices* of good and cultured persons, that is, their *Usages* or Customs) prevalent in different parts and societies of the country as one of the authoritative *Sources of Dharma*—

श्रुतिः स्मृतिः सदाचारः स्वस्य च प्रियमात्मनः। सम्यक् संकल्पजः कामो धर्ममूलमिदं स्मृतम् ॥—Yājñavalkya, I. 7; आचारः परमो धर्मः—Manu, I. 108; Vashiṣṭha, VI. 1; तदलाभे शिष्टाचारः प्रमाणम्—*Ibid.*, I. 4, etc. etc.

They also emphasised the different traditional Customs and Usages prevalent amongst the different castes and families in addition to the above among the *Sources of Dharma*—

देशधर्मान् जातिधर्मान् कुलधर्मांश्च शाश्वतान्। पाषण्डगणधर्मांश्च शास्त्रेऽस्मिन्नुक्तवान् मनुः ॥—Manu, I. 118; यस्मिन् देशे ये धर्मा ये चाचाराः ते सर्वत्र प्रत्येतव्याः—Vashiṣṭha, I. 8.

Baudhāyana also holds the same view that the *Shiṣṭāgama*—the practices of the cultured persons—is the authoritative Source in determining the *Dharma* for a locality or a society next in importance to Shruti and Smṛti (I. 4). This recognition of the different Customs practised by the cultured persons in different localities itself shows that there are bound to be differences in the laws regulating those societies; and it is, therefore, that we find that certain practices are approved of in certain parts of the country while they are looked upon with contempt and are regarded as sinful acts in other parts. Hence, it is not correct to say that differences in the practices of the various societies are of later origin. As these practices, due to several other reasons, came to be multiplied later on, differences also became intensified. This is responsible for widening the gulf between one society and the other in due course. This, it appears, influenced the later digest-writers to differ widely amongst themselves in the interpretation of the old Smṛtis which they quote in support of their statements. The nature of the Smṛti texts, again, is such that different interpretations in several cases could easily be given. But one thing is clear, that howsoever different the laws of one society or part of the country are from those of the other, it is a fact that the laws do not revolt against the ultimate principles of our life. The purification of body and sense-organs, including the internal ones as the means of the attainment of final emancipation (*Mokṣa*) was never lost sight of. This is perhaps the reason why in spite of the various religious and social revolts against the traditional Hindu society, from time to time, the latter has still continued to flourish in some form or other, having

assimilated the congenial aspects of those movements as far as possible without injuring the spirit of the ultimate aim. Under the circumstances, it was but natural that in later times, different ideas came to be popular in different parts of the country; and one set of digests became, for no intrinsic reason, the 'authority' for certain parts of the country. This gave rise to the idea of there being several 'Schools of Hindu Law'. Thus, we find that the *Mayūkha* came to be associated, more or less, with the Bombay Presidency; the works of Kamalākara and Mitra Mishra came to be recognised as being more authoritative in the *Madhyadesha* (Central India, and other adjoining parts of the country); the works of Jīmūtavāhana and Raghunandana became the authorities for Bengal; Raṇavīra-Ratnākara was regarded as authority for the Punjab; and the works of Lakṣmīdhara, Caṇḍeshwara and many others became authorities for Mithilā.

Mithilā, the present north Bihar, by reason of its somewhat secluded position has been able to preserve a continuity in the evolution of Hindu culture, from very ancient times. The great Vedic *Ṛṣis*, *Yājñavalkya*, *Vashiṣṭha*, *Vishvāmitra*, *Gautama*, *Kapila*, etc., made Mithilā their home and taught the *eternal truth*. The *Shatapatha-Brāhmaṇa* clearly tells us about the court of *Janaka* where Brāhmaṇas from different parts of the country used to throng. *Bṛhadāraṇyaka*, which is a part of the *Shatapatha*, abounds in the references to *Yājñavalkya's* philosophical discourses with *Maitreyī* and *Gārgī*. Later in the Epics and Purāṇas also, we find that Mithilā maintained her position as a centre of great culture and ancient learning. In early Buddhist records there are evidences which easily support all that has been said above about Mithilā. Although no connected history of Mithilā is recorded during the earlier centuries of the Christian era, yet from literary evidences it is clear that though influenced by the very close contact of Buddhism, Mithilā succeeded in retaining intact the fundamental truths embodied in Hindu culture which she continued and still continues to represent.

Of the two non-orthodox movements, Buddhism was much more powerful and wanted to throw out the very vital part of the Vedic civilisation; and accordingly, attacked the performances of sacrificial rites and rituals and the *Varṇāshrama-Dharma*. The Maithilas, who were a staunch orthodox people with the great ancient tradition behind them, could not tolerate the growing influence of Buddhism. They began to check its progress with the help of the traditional learning and reasonings. They also criticised the views set forth by the heterodox people by writing books. Mithilā gave up for the time being her *Ādhyātmikā* pursuits for which she was once very famous, and concentrated her whole attention on the preservation of the ancient culture against Buddhism. As the Buddhistic attack was directed mainly against the sacrificial rites and rituals and the *Varṇāshrama-Dharma*, the Maithilas began to write books in support of these two aspects of Vedic culture. This led to the production of the vast literature on Nyāya, Pūrva-Mīmāṃsā and Dharma-Shāstra. As the opposition grew stronger and stronger, more and more efforts were made from time to time by Maithila scholars to criticise the Buddhist views and re-establish the ancient Vedic culture. There were great scholars on the

Buddhist side who also began to reply to the criticisms levelled against them by the Maithila scholars, and wrote several standard works. This made the activities of the Maithila scholars still more intensive and they could easily preserve their own traditional civilisation. This religio-literary quarrel continued for several centuries, so that the Maithilas could retain their habit of literary pursuits and the link of the ancient civilisation, unaffected by any external forces. Another result of this was that even after the actual need of writing books against any heterodox religion had passed away the *Shāstrika* learning could continue to flourish in Mithilā, and they did not give up their scholarly pursuits. This is perhaps the reason why the systems of Pūrva-Mīmāṃsā and Nyāya came to be so widely studied in Mithilā. Although efforts were made in several other parts of the country to stop the influence of the non-orthodox culture by writing books and holding disputations, yet it appears that in Mithilā, where the clash was much more vigorous, the study of the Pūrva-Mīmāṃsā and Nyāya reached its very zenith. We find from the old records that during the reign of Rānī Vishwāsa Devī, the wife of Rājā Padma Singha, the younger brother of Rājā Shiva Singha, the patron of the poet Vidyāpati Ṭhākura, at the beginning of the fifteenth century, there was a big gathering of the Paṇḍitas in Mithilā wherein some fourteen hundred Maithila Mīmāṃsakas *alone* were invited. This is perhaps responsible for the fact that we find even to-day that there is hardly any other part of the country which singly has produced so many independent thinkers on Nyāya, Mīmāṃsā and Dharma-Shāstra as Mithilā. We are thankful to the Buddhists for creating such an opportunity which perhaps otherwise would not have been possible. Thus, at the cost of the *Ādhyātmika* pursuit of which also Mithilā was once a great centre, the Maithilas were able to take a great share in re-establishing the traditional Vedic culture once more in the country and establishing centres for the study of Mīmāṃsā, Nyāya and Dharma-Shāstra.

Such being the tradition of the past it is no wonder that Mithilā could produce a host of scholars like *Lakṣmīdhara, Graheshwara Mishra, Shrīdatta, Rudradhara, Caṇḍeshwara, Deveshwara, Gaṇeshwara. Vishweshwara Upādhyāya, Vardhamāna, Nyāyaratna Harinātha Upādhyāya* and the authors of *Smṛtimahārṇava, Shrīpati Saṁhitā, Chandogaparishiṣṭa, Shrāddha-Pañjikā, Paribhāṣā, Smṛtidarpaṇa*, etc. etc.

Vācaspati Mishra and his family.

In the land hallowed by such hoary traditions, was born Vācaspati Mishra, the *second* holder of the name. He was born in the well-known family of the Maithila Brāhmaṇas, called *Palivāḍa-Samaula.* Haladhara Mishra and Sose Mishra were his great-grandfather and grandfather respectively. He was the son of Giripati Mishra. The name of his son was perhaps Narahari, the author of a commentary on the *Ātmatattvaviveka* of Udayanācārya; he writes at the beginning of this commentary—

सूक्त्या पितृचरणानामवगतसन्दर्भसारेण ।
क्रियते श्रीनरहरिणा व्याख्या बौद्धाधिकारस्य ॥

This Narahari should be distinguished from the author of the commentary on the *Svarodaya*; for in this commentary the author says that he belongs to the family of *Māṇḍara*—

> श्रीमाण्डरशशिनेह(?)विदिते वंशे बुधालङ्कृते,
> ख्याते श्रोत्रियमण्डलीषु महति स्वाचारचर्योज्ज्वले ॥ etc.—

Perhaps the names of the grandfather and father of this Narahari were Gaṇesha and Narasimha respectively—

> वेदव्याकरणागमादिनिकषो नैयायिकः सत्कविः
> ज्योतिःशास्त्रविकाशनैकमिहिरो धीरो गणेशोऽभवत् ।
> तस्यात्मजोऽभून्नरसिंहधीरो
> न्यायागमाद्यद्भुतविद्य एकः ।
> वेदस्मृतिज्योतिषशास्त्रसार-
> व्याख्यानशुद्धैकमतिर्द्विजेन्द्रः ॥
> तस्यात्मजो नरहरिस्तत एव बुद्ध्या
> व्याख्यामिमां सकलशिष्यजनानुबन्धात्, etc.—स्वरोदयटीका.

(Vide Dr. Rajendralal Mittra's MSS. Cat., No. 2001.) Then as regards the author of *Dvaitanirṇaya*, the MSS. before me do not say anything about the father of the author Narahari. But the late MM. Pandit Parameshwara Jhā of Mithilā in his introduction to the *Dvaitanirṇaya* says that this Narahari is different from the son of Vācaspati Mishra. We further know from the Maithila Pañjī that Vācaspati had two more brothers, named Shrīpati and Kānha. His grandson is the famous scholar MM. Keshava Mishra, the author of *Dvaitaparishiṣṭa*. Nothing more is known about his family history. It is believed that Vācaspati lived in the village called Sugauna, near Rajnagar (B.N.W.Rly. Station).

In order to distinguish him from the great Vācaspati Mishra, the well-known author of the Bhāmatī and other philosophical treatises, this Vācaspati Mishra is called *Abhinava*. About his scholarship we know from his own works that he was well versed in Dharma-Shāstra, Nyāya and Pūrva-Mīmāṃsā. In his *Pitṛbhaktitaranginī* he says—

> शास्त्रे दश स्मृतौ त्रिंशन्निबन्धा येन यौवने ।
> निर्मितास्तेन चरमे वयस्येष विनिर्ममे ॥

that is, he who had written ten works on the '*Shāstras*' and thirty works on 'Smṛti' in his youth has composed this work in his old age. By '*Shāstra*' he means philosophical works. That he belonged to a family of the Karma-Mīmāṃsakas and that he was well versed in the Nyāya system is also clear from his own lines in the *Kṛtyapradīpa* and the *Shrāddhakalpa* where he says—

> वंशे जाते कलुषरहिते कर्ममीमांसकाना-
> मन्वीक्षायां गुरुकरुणया लब्धतत्त्वावबोधः ।
> श्रीमान् वाचस्पतिरहमिह प्रीतये पुण्यभाजां
> नत्वा नत्वा कमलनयनं कृत्यदीपं तनोमि ॥

—Mithilā MSS. Catalogue, Vol. I, p. 67.

This same verse with a very slight change in his *Shrāddhakalpa* in the fourth line, he reads—नत्वा नत्वा नलिननयनं श्राद्धकल्पं तनोमि—*Ibid.*, p. 459. From the first verse of his commentary on the *Tattvacintāmaṇi-Anumānakhaṇḍa* it is clear that he had studied both the Nyāya and the Mīmāṃsā. He says—

आराध्य यादवकिशोरमतिप्रयत्नात्
अभ्यस्य गौतममतं सह जैमिनीयम् ।
सारं विविच्य मतयोरनयोरशेषं
वाचस्पतिर्विशदये. . . . . .नुमार्गम् ॥

—Catalogue Palm-leaf MSS. of Nepal.

Vācaspati and his works.

A brief note on each of these forty-one works, ten on Philosophy and thirty-one on Hindu Law, is given below:—

Of the ten philosophical works we know of only a few:—

1. *Nyāyatattvāloka.*—This is a commentary of Gautama's Nyāya-Sūtras. It is unpublished, and a MS. of it dated 449 La. Saṃ. is in the State Library, Nepal.

2. *Anumānakhaṇḍaṭīkā.*—This seems to be a commentary on the Anumāna-Khaṇḍa of the Tattvacintāmaṇi of Gangesha. It is also unpublished, and a palm-leaf MS. of it is in the State Library, Nepal.

3. *Nyāyasūtroddhāra.*—This is the second effort made in determining the number and correct version of the genuine Sūtras of Gautama on Nyāya, the first having been made by his predecessor Vācaspati Mishra, the Senior, in his *Nyāyasūcīnibandha.*

4. *Khaṇḍanoddhāra.*—This is a sort of reply given to the criticisms of the great polemical writer Shrīharṣa in his Khaṇḍanakhaṇḍakhādya against the dualistic arguments of the Nyāya-Vaisheṣika. We know that similar efforts were made by others also, amongst whom the name of Shankara Mishra deserves mention.

5. *Shabdanirṇaya.*—No MS. of this is yet found, but Vācaspati himself makes a reference to this work of his in his *Dvaitanirṇaya*—

अनृत्विकत्वे दक्षिणादानं नास्त्येव ऋत्विगानतिद्वारा तस्य क्रत्वङ्गत्वादिति गुरुमतं तच्च शब्दनिर्णये विस्तरेण खण्डितमिति नेह तन्यते—p. 8.

6. A commentary on the *Kāvyaprakāsha* of Mammaṭa, a reference to which is found in the commentary called *Sudhāsāgara* on the same by Dīkṣita Bhīmasena. Another reference to this commentary by Vācaspati Mishra is found in the commentary on the *Kāvyaprakāsha* by Caṇḍī Dāsa.

Other works on '*Shāstra*' are not yet known. Then on the Smṛti the following are known to us so far:—

1. *Kṛtyacintāmaṇi.*—This has been published from Benares. It deals with the various important monthly rites and ceremonies to be performed during the whole of the year. Besides, it discusses other topics, like the Sankrānti, worship of the *Shivaliṅga*, *Malamāsa*, Birthday ceremonies, *Shrāddha* in general, *Yajñopavītadhāraṇa*, Unusual phenomena, *Ashauca*,

Sankara, Varieties of marriage, Oaths and Ordeals, Purification of tanks, etc.:—

(i) It is here that we find the mention of the fourteen kinds of vegetables which should be eaten on the *Pretacaturdashī*, that is, the fourteenth day of the dark half of Kārtika:—

ओलं, केमुकं, वास्तुकं, सर्षपं, कालं, निम्बं, जया (जयन्ती), शालिञ्चि, हिलमोचिका, पटोल, शौल्फं, गुडूची, भण्टाकी, and सुनिषण्णक (p. 33).

If any one takes these he becomes free from *Pretattva*.

(ii) According to him, as the time for taking the day-meal is noon, the *Bhrātṛ-Dvitīyā* should be observed on that day on which the *Dvitīyā* falls about noon.

(iii) By '*Parānna*' one should understand all except the food of his *guru*, maternal uncle, father-in-law, father, and one's son.

(iv) One should not use *til*-oil for rubbing on the body on Sundays, Tuesdays and Fridays, for if one does so then one's son dies, it causes one's own death and one loses wealth respectively.

These are a few peculiarities which I could notice in this book.

He quotes from the following old works: *Kalpataru*, *Durgābhakti-taranginī* (by Vidyāpati Ṭhākura?), *Kulārṇava* (Tantra?), *Shivarahasya*, *Baudhāyana*, *Rājamārtaṇḍa*, *Vātsyāyana*, *Bhojarāja*, *Smṛtisāgara*, *Muṇḍamālātantra*, *Rāmārcanacandrikā*, *Bhāsvatī*, *Vyavahāramātṛkā*, and *Kuthumi* and *Smṛtisāra*. Besides, his own works *Shrāddhacintāmaṇi*, *Shuddhicintāmaṇi* and *Dvaitacintāmaṇi* are quoted here. He also refers to the views of Bhavadeva Bhaṭṭa.

The word *Kroḍawāra*, meaning Saturday, a word of very rare use, is used here.

2. *Shuddhicintāmaṇi*.—This has been printed at Benares, in Bengali script. It deals with the various kinds of purification in connection with the expiatory rites. Besides, it also discusses the purification of body, limbs, grains, metals, cooked food, water, earth, when they are polluted. It also tells us about those objects and persons who are by nature pure and do not require any external purification.

A few notable points are given below:—

(i) He refers to the suicidal act by falling down from the Vaṭa tree at Prayāga and killing oneself as an act of merit and not an act of sin.

(ii) Every detail of the expiatory rites is found here as is in actual practice even these days.

(iii) The purification of ladies in general in every phase of their life is found here in detail.

He quotes among others the following: *Bhāṭṭāḥ*, *Prabhākarāḥ*, and *Ācāryāḥ*; *Mitākṣarā*, *Hāralatā*, *Harihara*, etc., *Smṛtidarpaṇa*, *Chandoga-parishiṣṭa*, *Prakāsha*, *Ratnākara*, *Smṛtisāra*, *Pārijāta*, *Smṛtikāra Vyāghrapāda*, *Smṛtipradīpa*, *Smṛtisāgara*, *Kalpatarukāra*, *Aniruddha*, *Shuddhisāra*, *Bhoja-*

Vijayin, *Bhavadeva Bhaṭṭa*, *Sugatisopāna*, *Govindarāja*, *Rūpanārāyaṇa*, *Smṛtisamuccaya*, *Shabdamahārṇava* by Vācaspati, *Vishvakoṣa*, *Navyāḥ*, *Pradīpa*, and *Kalpataru*. Besides, he mentions his own *Āhnikacintāmaṇi* which deals with the *Vājasaneyins*. In almost all his works he refers very often to the *Brahmapurāṇa* and it appears that most of the customs and daily usages of Maithilas are in agreement with this *Purāṇa*.

This is quoted by him in his own *Kṛtyacintāmaṇi* and by *Raghunandana* in his *Shuddhi* and *Vivāha Tattvas*.

3. *Tīrthacintāmaṇi*.—This is published by the Asiatic Society of Bengal in the Bibliotheca Indica Series. It is based on *Kṛtyakalpadruma*, the *Pārijāta*, and the *Ratnākara*. It consists of mainly the five chapters called *Prakāsha* on the five important places of pilgrimage, namely, *Prayāga*, *Puruṣottamakṣetra* including the *Kṛttivāsaḥkṣetra*, *Koṇārkakṣetra* and *Virajakṣetra*, *Gayā*, *Gangā* and *Vārāṇasī*. Every ceremony connected with each of these in every aspect is dealt with here.

A few notable facts are given below from this book:—

(i) One who takes bath in the Ganges at Prayāga which has got three wells on the three sides of the river, namely, one in the Prayāga proper, second in the *Pratiṣṭhāna-Nagara* (modern Jhusi) and the third in the *Alarka-Nagara* on the south of the Yamunā, just after one has entered the Tīrtha, casts off all sins.

(ii) Death by keeping fasts, standing under the waters of the Ganges up to the navel, makes a man free from births and deaths.

(iii) While dealing with Benares he says that there is an Idol (*liṅga*) of *Avimukteshwara* which is known as Vishwanātha in the world, which has been consecrated by the Lord Shiva Himself in this place which is called *Avimuktakṣetra* and also *Shmashānakṣetra*. That place itself is known as the *Kukkuṭamaṇḍapa* and one who enters that *Maṇḍapa* from the southern gate never comes back to this world again.

South of this *Maṇḍapa* where the Idol is consecrated there is a well called the *Vijñānavāpī* as it brings true knowledge to those who drink water from this well.

The most interesting point regarding this is that according to Vācaspati Mishra the temple of the Lord *Vishwanātha* is situated on the *north* of the *Vijñānavāpī*. We know from history that under the instructions of some Mahomedan ruler the old temple of Vishwanātha, which was really on the north of the well, was demolished and that the new temple which now exists came to be constructed to the *south* of the well; and the reconsecration ceremony of the idol was done by Nārāyaṇa Bhaṭṭa II in the middle of the fifteenth century.

Some of the more important works and writers mentioned or quoted in this book are *Gaṇeshwara Mishra*, *Kalpatarukāra*, *Jaya Sharmā*, and *Kṛtyakalpadruma*, *Pārijāta*, *Ratnākara*, *Smṛtisamuccaya*, *Kalpataru*, etc.

This book has been quoted by Gaṇapati in his *Gangābhaktitaranginī*, and by Raghunandana in his several *Tattvas*.

4. *Gayā-Shrāddha-Paddhati.*—It is printed at Bombay. The *Maṅgala* verse of this book is the same as that of the *Tīrthacintāmaṇi-Gayāvidhi.* But these are two independent works and differ widely from each other. A reference to *Jaya Sharmā* is also found in this book.

5. *Dvaitanirṇaya.*—This book is also published. It deals with several disputed points of the *Dharma-Shāstra* and is regarded as authoritative in Mithilā. It is quoted by *Gaṇapati* in his *Gangābhaktitaranginī*, by *Raghunandana* and by *Govindānanda.* Its importance is clear from the fact that *Gokulanātha Upādhyāya* has written a commentary, called *Pradīpa,* upon this work and *Madhusūdana Ṭhākura* has written another commentary, named *Dvaitanirṇaya-Jīrṇoddhāra,* upon the same.

That this book was written by the order of Rāni Jayā Devī, wife of Bhairavadeva and mother of Puruṣottamadeva, is evident from the introductory verses:—

विष्णोर्व्यक्तः पुरमिव शम्भोरिव देहवामार्धम् ।
देवीसनाभिरेषा जयति जयात्मा महादेवी ॥
श्रीभैरवेन्द्रधरणीपतिधर्मपत्नी
राजाधिराजपुरुषोत्तमदेवमाता ।
वाचस्पतिं निखिलतन्त्रविदं नियुज्य
द्वैते विनिर्णयविधिं विधिरुत्तनोति ॥

Some interesting and notable points are given below:—

(i) There are four kinds of reservoir of water: (*a*) *Kūpa* (well) where there is no way to enter into; (*b*) *Vāpī*—that reservoir of water where there are steps to enter into; (c) *Puṣkariṇī* is of the measure of 100 *dhanvantaras*—one *dhanvantara* is equal to four cubits in length; and (*d*) *Taḍāga* is equal to five times the *Puṣkariṇī.*

(ii) While offering libations to one's deceased ancestors (*tarpaṇa*), the *Pradīpa* says, that we should say—'*Pitā tṛpyatām*', but the *Kalpataru* is of opinion that we should add the word '*Asmat*' to the above, which the *Pārijāta,* on the other hand, rejects. Vācaspati, however, agrees with the *Kalpataru.* So says the *Candra* (Misarū Mishra) also.

(iii) He disagrees with *Harihara* as regards the giving of oblations to the *Bhūtas* (*Bhūtabali*), who holds that five separate oblations are to be offered to with the five mantras respectively. He agrees with *Shrīdatta* and *Vardhamāna.*

(iv) In one place he says—

मैथिलास्तु शतपथादर्शिनः पितृभक्तिप्रामाण्याभिमानिनो यजुर्विदोऽपि उपवीतिनोऽत्र भवन्ति (p. 82).

(v) If a *Shrāddha* is performed in the *Malamāsa,* then the following acts should not be done as they are *Kāmya:* Giving away of bedding, *Kāñcana-Puruṣa, Kapila-Gavī,* umbrella and shoes; the worship of *Dampati* and the *Vṛṣotsarga.*

(vi) Regarding the practice of the *Kartā-Putra* he says: in every *Shrāddha* the *Kṛtrima-Putra* uses the expression मत्पुत्रत्वकर, but this usage is neither *ārṣa* nor used in any digest, but has been used by the later Maithilas; and as it gives the sense in a connected form, the cultured Maithilas also have approved of its use which is deplorable.

(vii) The father should not perform the *ābhyudayika* for the second marriage of his son, for it is done as part of the *Samskāra* which is complete with the first marriage.

He quotes the following works and authors: *Prābhākarāḥ*, *Shatapatha*, *Bhavadeva-Phakkikā*, *Vasiṣṭhasamhitā*, *Trailokyasāra*, *Cūrṇikā*, *Kāmadhenu*, *Ratnākara*, *Pradīpa*, *Kalpataru*, *Pārijāta*, *Candra*, *Gurumata*, *Bhaṭṭamata*, *Shrīdattāhnika*, *Vardhamānāhnika*, *Chandogaparishiṣṭa*, *Prakāshavyākhyā*, *Smṛtisāra*, *Samayapradīpa*, *Shrāddhaviveka*, *Parishiṣṭaṭīkā*, *Pitṛbhaktiḥ*, *Shrāddhapradīpa*, *Chandogasopāna*, *Viṣṇusūtra*, *Paribhāṣā*, *Hariharapaddhati*, *Gosavapaddhati*, *Shrāddha-Pañjikā*, *Shrāddha-Pārijāta*, *Shrāddha-Pallava*, *Ācāra-Candra*, *Mahādānanirṇaya*, *Dānaratnākara*, *Daivajñabāndhava*, *Shrīpatisamhitā*, and *Ratnāvalī* by *Mahāmahopādhyāya Sudhākara*. He also quotes his own works—*Shrāddhakalpa*, *Shrāddhacintāmaṇi*, and *Mahādānanirṇaya*. The authors quoted are: *Bhavadeva*, *Shrīdatta Upādhyāya*, *Rūpanārāyaṇa*, *Bhūpāla*, *Nyāyaratna Harinātha Upādhyāya*, *Shankarācārya*, *Bhāskarācārya*, *Harihara*, *Vāsudeva*, *Halāyudha*, *Lakṣmīdhara*, *Rājā*, *Pratihastaka*, *Karkopādhyāya*, *Gauri* the author of *Shrāddhacintāmaṇi*, *Asahāya*, *Udayakara*, and *Sudhākara*.

He speaks very highly of *Kalpataru* and *Pradīpa*. Throughout his works Vācaspati shows his wide knowledge of Nyāya and Mīmāṃsā. He actually quotes several Sūtras from the Nyāya-Sūtra.

6. *Sārasaṅgraha*.—The opening verse is—

शिवं नत्वा स्मृतेस्तत्त्वे क्रियते सारसङ्ग्रहः ।
श्रीवाचस्पतिधीरेण वैधकृत्यप्रवृत्तये ॥

Vide Dr. R. L. Mittra's Cat. of Sanskrit MSS., No. 272.

7. *Shūdrācāracintāmaṇi*.—It deals with the duties and customs of a Shūdra. The book is unpublished. Later on, Kamalākara also wrote a similar work, named *Shūdrakamalākara*. The opening verse of this work is—

तीक्ष्णत्विषे नमस्कृत्य श्रीवाचस्पतिशर्म्मणा ।
धर्मशास्त्रं समालोक्य शूद्राचारो वितन्यते ॥

From the colophon of this MS. it is clear that Vācaspati Mishra was a court *Paṇḍita* (*Pariṣad*) and that he was recognised as the leading Paṇḍita of the court.

8. *Mahādānanirṇaya*.—The book is not published. There is a MS. of this work in the State Library of Nepal which is dated La. Saṃ. 392, that is, 1511 A.D. It is said in the opening verse that the Maithila *Rājā Bhairavendra* with the help of Vācaspati wrote this work—

श्रीवाचस्पतिधीरं सहकारितया समासाद्य ।
श्रीभैरवेन्द्रनृपतिः स्वयं महादाननिर्णयं तनुते ॥

It deals with the sixteen great gifts.

9. *Chatrayogodbhūtadoṣashāntividhiḥ*.—The opening verse says that the work was written at the instance of one *Sāha Bahādura*. We do not know anything more than this about this work. The opening verse runs as follows:—

श्रीमत्साहबहादुरस्य तनुते श्रीछत्रयोगोद्भवम् ।
प्राप्याज्ञां सुविधिं सुनिर्मलमतिः श्रीमिश्रवाचस्पतिः ॥

There is another verse also which gives us some idea about the date of this work—

श्रीशाके शरपुष्करावनिधरप्रालेयराचिर्मिते
तिग्मांशौ वृषराशिगे मकरगे जीवे तपर्त्तौ शुचौ ।
शुक्ले ब्रह्मतिथौ शिवर्क्षविलसद्गौरांशुवारेऽकरोत्
तन्त्रादीनवलोक्य पद्धतिमिमां श्रीमिश्रवाचस्पतिः ॥

10. *Shrāddhavidhi*.—It deals with the expiatory rites, etc. It is different from his another work on the similar subject. Its opening verse runs as follows:—

प्रणम्य परमात्मानं विचार्याचार्यसंहिताः ।
श्रीवाचस्पतिमिश्रेण श्राद्धस्य विधिरुच्यते ॥

11. *Tithinirṇaya*.—It discusses the doubtful points regarding the observance of *tithi*. Its opening verse is:—

विलोक्य मुनिवाक्यानि सम्प्रदायानुसारतः ।
तिथिद्वैतविधौ यत्नात् क्रियते तिथिनिर्णयः ॥

The authenticity of this work is doubtful for two reasons—one that the opening verse, as given above, does not contain the name of Vācaspati as in other works, and the second point is that this very verse with a very slight difference is found in the beginning of the *Tithinirṇaya* by *Shubhaṅkara Ṭhākura* (vide Mithilā MSS Cat., Vol. I, p. 161).

12. *Ācāracintāmaṇi*.—It deals, as the very name suggests, with the daily duties of the *Vājasaneyins*, as is clear from his own verse in the beginning of the work:—

अहोरात्राश्रिताचार इह वाजसनेयिनाम् ।
निबध्यते हरिं नत्वा श्रीवाचस्पतिशर्म्मणा ॥

—Mithilā MSS. Cat., Vol. I, p. 17.

It is quoted by *Raghunandana Bhaṭṭācārya* in his *Tattvas*. It is still unpublished.

13. *Āhnikacintāmaṇi*.—It also appears to be a book on the daily duties of the *Brāhmaṇas* of the *Kātīya* school. No MS. of this work is yet found but that Vācaspati wrote this work is clear from his own reference to it in his *Shuddhicintāmaṇi* (आह्निकचिन्तामणौ कातीयस्नानेऽध्यवसेयाः—p. 90). *Raghunandana* also quotes this work in his *Ekādashī* and *Āhnika Tattvas*.

14. *Dvaitacintāmaṇi.*—We have not seen as yet any MS. of this. He himself refers to this work in his *Kṛtyacintāmaṇi* (प्रपञ्चितमिदं द्वैतचिन्तामणौ इत्येतदनुसन्धातव्यम्—p. 53).

15. *Nīticintāmaṇi.*—No MS. of this work also is found as yet. He himself refers to this book in his *Vivādacintāmaṇi* (प्रपञ्चितं मया नीतिचिन्तामणौ—p. 112).

16. *Vyavahāracintāmaṇi.*—It is a legal work dealing with evidences, etc. in four sections: (i) *bhāṣā*—meaning plaint; (ii) *uttara*—meaning written statement by way of reply; (iii) *kriyā*—meaning procedure; and (iv) *nirṇaya*—meaning decision by the Court. As he himself says—

भाषोत्तरक्रियावादा निर्णयस्सोपदेशकः ।
चतुष्पात्तत्त्वविषयो व्यवहारो निरूप्यते ॥

(Vide Mithilā MSS. Cat., Vol. I, p. 392.)

According to Rai M. M. Chakravarti Bahādura, the book quotes the following: *Kalpataru, Pārijāta, Bhavadeva, Mitākṣarā, Ratnākara, Rājā, Lakṣmīdhara, Viveka, Pradīpa, Smṛtisamuccaya,* and *Halāyudha.*

17. *Vivādanirṇaya.*—It also appears to be a legal book. There is a MS. of it in the State Library, Nepal (MSS. Notices, p. 90).

18. *Shuddhinirṇaya.*—This is again a separate book. It deals with the purification of various types. It is also unpublished. There are several MSS. of this work available in Mithilā (vide Cat. of Mithilā MSS., Vol. I, pp. 430-31). The opening verse is—

प्रणम्य परमात्मानं श्रीवाचस्पतिशर्म्मणा ।
आलोक्य मुनिवाक्यानि शुद्धिनिर्णय उच्यते ॥

19. *Candanadhenu-pramāṇa.*—According to Rai Bahādur Chakravarti this book discusses the *Smṛti* texts for substituting sandal-paste marks instead of burnt marks on the bull dedicated at the time of Shrāddha. It quotes *Karmopadeshinī, Ratnākara, Brāhmaṇasarvasva,* and *Halāyudha* (vide Dr. R. L. Mittra's Notices, IX, p. 236, No. 3154, Folio 6).

20. *Dattakavidhi* or *Dattaka-putreṣṭi-yāga-vidhi.*—Herein he discusses the procedure of the adoption of a son (vide H. Shastri, Notices of Sanskrit MSS., III, p. 90, No. 139).

21. *Kṛtyapradīpa.*—It is a treatise dealing with the daily duties from getting up from the bed to the going back to the bed at night. It also deals with the *Ābhyudayika*, etc. There are several MSS. of this work in Mithilā. The opening verse is important as it helps us to prove the identity between the *Dārshanika* Vācaspati and the *Dharmashāstrī* Vācaspati. The verse runs as follows:—

वंशे जातः कलुषरहिते कर्ममीमांसकाना-
मन्वीक्षायां गुरुकरुणया लब्धतत्त्वावबोधः ।
श्रीमान् वाचस्पतिरहमिह प्रीतये पुण्यभाजां
नत्वा नत्वा कमलनयनं कृत्यदीपं तनोमि ॥

(Vide Cat. of Mithilā MSS., Vol. I, pp. 67–69, Nos. 75-A-E.)

22. *Gayāpattalaka.*—It treats of the ceremonies which are to be performed when one visits *Gayā* for *Shrāddha.* It is different from another work on the same subject noticed above (vide Cat. of the Mithilā MSS., Vol. I, pp. 93-94, Nos. 93–95).

23. *Tīrthakalpalatā.*—This appears to be a separate work. The *Maṅgala* verse is also different from that of the *Tīrthacintāmaṇi.* It runs as follows:—

हिताय साधुवृत्तानां वेदवृक्षानुगामिनाम् ।
तीर्थे कल्पलता नत्वा श्रीवाचस्पतिशर्म्मभिः ।।

Here he seems to discuss the *Tīrthayātrā*—its merits in general (vide Cat. of the Mithilā MSS., Vol. I, p. 181, No. 166). This book is also named *Tīrthayātrāvidhi* (vide *ibid.*, pp. 184-185).

24. *Shrāddhakalpa.*—This is again different from his *Shrāddhacintāmaṇi.* The work is unpublished and there are several MSS. of this in Mithilā. It deals with such duties also as *Sandhyā, Tarpaṇa, Nityashrāddha, Nāndīmukha,* etc. He quotes amongst others—*Shrīdatta Upādhyāya, Garga, Bhojarāja, Bhujabalabhīma, Shatānanda, Ācārādarsha, Guṇisarvasva, Rājamārtaṇḍadīpikā, Ratnamālā, Ratnāvalī, Ratnasāra, Rājādinibandha* and also *Bādarāyaṇa.* The opening verse is the same as quoted above supporting the identity between the *Dārshanika* Vācaspati and the *Dharmashāstrī* Vācaspati:—

वंशे जातः कलुषरहिते कर्ममीमांसकानां etc.

(Vide Mithilā MSS. Cat., Vol. I, pp. 458-59.)

MM. P. V. Kane says that the Shrāddhakalpa is another name of the *Pitṛbhaktitaraṅgiṇī.* But from the opening verses as given above it does not appear to be so.

25. *Tīrthalatā.*—This also appears to be different from his *Tīrthacintāmaṇi.* It deals with ceremonies to be performed at *Kāshī, Prayāga,* and other places of pilgrimage. There is only one MS. of it so far traced in the Raj Library, Darbhanga (vide Cat. of Mithilā MSS., Vol. I, p. 185, No. 169).

26. *Pitṛbhaktitaranginī.*—This is the work which Vācaspati wrote in his old age and this is his 31st work as he has himself said towards the end of this very book—

शास्त्रे दश स्मृतौ त्रिंशन्निबन्धा येन यौवने ।
निर्मितास्तेन चरमे वयस्येष विनिर्ममे ।।—(Verse 3)

(at the end of the last section but one). This work also deals with the expiatory rites, etc. Its opening verse is—

प्रणम्य वासुदेवाय तन्यते स्वर्गरङ्गिणी ।
श्रीवाचस्पतिधीरेण पितृभक्तितरङ्गिणी ।।

This is also unpublished. There are several MSS. of it available in Mithilā (vide Cat. of Mithilā MSS., Vol. I, pp. 283–285).

27. *Kṛtyamahārṇava.*—Like the *Mahādānanirṇaya* this book was also written by Vācaspati, but it is associated with the name of his patron, *Mithilesha Harinārāyaṇa,* and it is therefore that sometimes it is said to be the work of *Harinārāyaṇa* also. In the MS. it is said that there were seven

Mahārṇavas—Kṛtya, Ācāra, Vivāda, Vyavahāra, Dāna, Shuddhi, and *Pitṛyajña,* of which this is the first.

Some of the notable points are:—

(i) He enumerates the following 36 *Smṛtikāras* whose works alone are reliable:—

मनु, विष्णु, यम, दक्ष, अंगिरा, अत्रि, बृहस्पति, उशना, आपस्तम्ब, वशिष्ठ, कात्यायन, पराशर, व्यास, शंख-लिखित, सम्वर्त्त, गौतम, शातातप, हारीत, याज्ञवल्क्य, प्रचेतस्, देवल, लोमश, जमदग्नि, प्रजापति, विश्वामित्र, पैठीनसि, पितामह, बौधायन, छागलेय, जाबालि, च्यवन, मरीचि, कश्यप, नारद and दक्ष।

(ii) He uses the term *Tarka* for Mīmāṃsā and he quotes *Bhaṭṭa* in his support (p. 2*a*).

(iii) The eight *Nāgas* are—

वासुकि, तक्षक, कालिय, सालभद्र, ऐरावत, धृतराष्ट्र, कर्कोटक and धनञ्जय.

(iv) One should not eat the white class of vegetable called *Shimba* (*sema*) in the month of *Kārtika* (57*a*).

(v) He enumerates the seven objects constituting what is called *sarvagandha*—

कस्तूरिकाया द्वौ भागौ चत्वारः कुंकुमस्य च ।
षोडशश्चन्दनस्यैव कर्पूरस्य चतुष्टयम् ॥

He quotes amongst others the following:—

भट्ट, कल्पतरु, काश्मीराः, कालविवेक, समयप्रदीप, गौडाः, राजमार्त्तण्ड, गांगेयाख्य ज्योतिर्निबन्ध, प्रतिहस्तक, छन्दोगपरिशिष्ट, अनन्तभट्ट, स्मृतिसार, रत्नाकर, श्रीपति-संहिता, नन्दिपुराण, श्राद्धविवेककारादयः, विश्वरूपनिबन्ध, भोजराज, दानसागर, गन्धशास्त्र, वाक्यकरण्डिका, आचारचन्द्र, कालादर्श, कृत्यकल्पलता, भीमपराक्रम, परिभाषा, श्रीदत्त, सिद्धान्तमणि, etc. etc.

28. *Vivādacintāmaṇi.*—This is one of the most important works on Hindu Law. It has been published both from Bengal and Bombay. It was first translated into English by the late Prasannakumara Tagore in 1863. Its importance can be assessed from what MM. P. V. Kane, in his *History of Dharmashāstra,* says—'*Vivādacintāmaṇi* has been recognised by the High Courts in India and by the Judicial Committee of the Privy Council as a work of paramount authority on matters of Hindu Law in Mithilā' (p. 399).

It deals with the eighteen titles of law (*vyavahārapadas*), namely: (i) Non-payment of debt (ऋणादान), (ii) Deposits (निक्षेप), (iii) Selling without ownership (अस्वामिविक्रय), (iv) Joint Concerns (सम्भूय समुत्थान), (v) Non-delivery of what has been given away (दत्ताप्रदानिक), (vi) Non-payment of wages (वेतनस्य अदानम्), (vii) Breach of contract (संविद् व्यतिक्रम), (viii) Rescission of sale and purchase (क्रयविक्रयानुशय), (ix) Dispute between

the owner and the keeper (विवादः स्वामिपालयोः), (x) Disputes regarding boundaries (सीमाविवाद), (xi) Assault—verbal (वाक्पारुष्य), (xii) Assault—physical (दण्डपारुष्य), (xiii) Theft (स्तेय), (xiv) Violence (साहस), (xv) Adultery (स्त्रीसंग्रहणं), (xvi) Duties of man and wife (स्त्रीपुंधर्मः), (xvii) Partition (विभागः), and (xviii) Gambling and betting (द्यूतं—आह्वयः), as described in the *Manusmṛti* (Chapter XVIII).

Certain notable facts picked up from the book are:—

(i) The *Smṛti* principles regulating the 'Case' (*vyavahāra*) are based on reason and not on *Shruti*—

न्यायमूला हि व्यवहारस्मृतयः न तु श्रुतिमूलाः (p. 59).

(ii) There are two sorts of thieves—one visible, such as a merchant or a trader or a shopkeeper, and the other invisible, namely, those who make openings in one's house, etc.

(iii) He says that no part or a quantity of pure gold will be lost even if it is heated for the whole day and night. This is the old view of the *Naiyāyikas* according to whom gold is a *taijasa* substance. In support of the above view he also quotes—

याज्ञवल्क्य—'अग्नौ सुवर्णमक्षीणम्' (व्यवहाराध्याय, verse 178).

(iv) He notes that if one hundred *Pala* of silver is heated then only two *Palas* will be lost; and in the case of 100 *Palas* of glass if heated, only 8 *Palas* will be lost; in the case of 100 *Palas* of copper only 5 *Palas* will be lost; and if a goldsmith or other trader says that more than what is said above is lost, he should be punished for stealing.

(v) The present ceremony known as the *Dvirāgamana* amongst the *Maithilas* is referred to in this book. He also refers to the custom of giving some presents to a newly married bride at the time of bowing down to her father-in-law or mother-in-law or to other elders at the time of her first arrival from her father's house.

He quotes amongst others the following: *Halāyudha*, *Nārada*, *Gṛhastharatnākara*, *Pārijāta*, *Ratnākara*, *Smṛtisāra*, *Kalpataru*, *Hārīta*, *Vyāsa*, *Yājñavalkya*, *Viṣṇu*, *Kātyāyana*, *Lakṣmīdhara*, *Prakāsha*, *Mitākṣarā*, *Prakāshakāra*, *Bālarūpa*, and *Medhātithi*. Besides, he refers to his own works *Nīticintāmaṇi* and *Shrāddhacintāmaṇi*.

In the very beginning the author says that he had consulted the *Kṛtyakalpadruma*, *Pārijāta*, *Ratnākara* and others before he began this work.

In one place (p. 2, Bombay ed.) he says—

न्यायचतुर्थाध्याये व्यक्तम्—

This refers to Nyāya-Sūtra of Gautama, IV. i. 59-60, where it is argued that the duties of man are called 'Debts' in the sense that it is necessary to perform them. So the Bhāṣya makes it clear that the term *Debt* used here is not in its direct primary sense.

By the way, Vācaspati, in order to clarify the meaning of certain Sanskrit terms, has given their equivalents from his own mother-tongue, *Maithilī*. For instance, ओह्राली (री) for स्यन्दनिका (Skt.) 'ends of roof' (p. 97); गोन्दतल (Maithilī) for व्युत्कर or अवकर (Skt.) 'rubbish' (p. 99); कोटवार कोतवाल (Maithilī) for आरक्षक: 'officer-in-charge of the town' (p. 147); शाक (Bombay ed.), साकम (Bengal ed. referred to by Mr. Kane, p. 400, H. of Dha.) for संक्रम: (Skt.), p. 157, meaning 'a contrivance by which men cross over waterways' as explained by Medhātithi; छुच्छुन्दरि for भेरीक, meaning 'musk-rat' (p. 165); वेशवी or वेशरी for अश्वतर, meaning 'mules' (p. 108).

Besides, there are certain expressions in Sanskrit which look like words of Maithilī; for instance, the term वण्टनीयं in एवञ्च पितृणं परिशोध्य पश्चाच्छेषं वण्टनीयमित्यर्थ: (p. 210) looks like the Maithilī बाँटब ; at least the root appears to be the same in both. बन्धकीकृत: or बन्धक is the same as बन्धक, in Maithilī, meaning a kind of deposit.

He refers to the काष्ठमयभाण्ड, meaning a measure for measuring rice, etc. This refers to the practice of keeping measures made of either wood or bamboo, called in Maithilī तांवा or तामा or पैली, etc. for measuring rice, etc.

There are certain Sanskrit words of very rare use, namely, वडवा for दासी (p. 70); शलाकी for नापित (p. 82)—can this expression be due to the fact that these barbers were accustomed to use *probe*, a kind of surgical instrument (*shalākā*) for petty surgical purposes in olden times ?

He uses the word उद्धृत or उद्धार (Maithilī उधार) in the sense of 'credit' or 'loan' (p. 2).

He refers to six kinds of interest to be taken by the money-lender: (i) Annual (कायिका), (ii) Monthly (कालिका), (iii) Double interest (चक्रवृद्धि), (iv) Daily (शिखावृद्धि), (v) कारिता——आपदि स्वीकृता, any interest accepted under the pressure of some calamity, and (vi) भोगलाभ:—दासादिभोग: ।

These are the works which are known to us at present.

Vācaspati's place amongst the digest-writers.

It is admitted by all that Vācaspati was a versatile scholar. Perhaps he wrote the largest number of law-digests dealing with almost every aspect of the Dharma-Shāstra. We know that there were several predecessors of his who also wrote several standard works on Hindu Law. But we do not know that any one of them also could equally produce any work on the Darshana-Shāstra. Vācaspati, on the other hand, is a recognised author of no less than ten standard works on *Darshana*. In this respect I think except one or two there are not many other instances even in Mithilā. It was perhaps due to this very fact that they say—शङ्करवाचस्पत्यो: सदृशौ शङ्करवाचस्पती एव. Vācaspati Mishra, the Senior, to whom a reference is made in the above line, was undoubtedly one of the greatest scholars that India has produced.

He is known to have written commentaries on all the six orthodox and six heterodox systems of philosophical thought, but we do not know so far if he ever wrote any work on the *Dharmashāstra*. But even so both are recognised as great versatile scholars of Mithilā. The above line also refers to Shaṅkara Mishra, son of Bhavanātha Mishra and Vācaspati Mishra, the Junior.

Vācaspati's views came soon to be recognised as authoritative in different parts of the country. We are aware that *Raghunandana Bhaṭṭācārya* and *Govindānanda* of Bengal have freely quoted Vācaspati and his works in their own law-digests. *Nanda-Pandit* refers to the *Shrāddha-cintāmaṇi* and *Vācaspati* by name in his *Shrāddhakalpalatā* and *Dattaka-mīmāṃsā* respectively. *Mitra Mishra* quotes him in his well-known *Vīramitrodaya*. *Kamalākara Bhaṭṭa* also refers to Vācaspati and to his *Shuddhicintāmaṇi* in his *Nirṇayasindhu* (pp. 183, 204) and so on. Vācaspati's name and fame thus spread over other parts of the country also. It has been already pointed out above that his *Vivādacintāmaṇi* is recognised by the Law Courts as a work of paramount authority on matters of Hindu Law in Mithilā (vide P. V. Kane, *History of Dharmashāstra*, p. 399). Even at present we find that his views are quoted by great Maithila scholars with respect on matters of *Dharma-Shāstra* in Mithilā and elsewhere. Such is the position which Vācaspati Mishra II occupies amongst the digest-writers. But it would not be out of place to say that even then it would not be quite correct to say, like MM. Kane, that 'he is the foremost *nibandha*-writer of Mithilā' (*Hist. of Dharma.*, p. 399), for there have been several far superior and authoritative writers amongst the *Maithilas*, to name a few, *Lakṣmīdhara, Caṇḍeshwara, Rudradhara, Shrīdatta, Harinātha*, etc., whom *Vācaspati* himself quotes with great respect. Amongst Vācaspati's own contemporaries we may mention the names of *Misarū Mishra* who was the Court *Paṇḍita* of *Candra Simha*, the brother of Bhairava Simha, the patron of *Vācaspati*; *Indrapati*; *Prema-nidhi*; *Lakṣmīpati*; *Shaṅkara Mishra*, the well-known author of *Vaisheṣika-Upaskāra*, who have been famous writers in Mithilā.

Date of Vācaspati.

For determining the date of Vācaspati we have the following information from his own works :—

(i) In *Nyāya-sūtroddhāra* he speaks himself as *Mithileshwara-sūri*.

(ii) In the colophon of his *Shūdrācāracintāmaṇi* he says—*Mahā-rājādhirāja-Shrīmaddharinārāyaṇa-Pariṣad*, a Court *Paṇḍita* of the *Mahārāja Harinārāyaṇa* which was another name of *Bhairava Simha*.

(iii) In the *Pitṛbhaktitaranginī* towards the end he calls himself the Court *Paṇḍita* of *Rāmabhadradeva* who was the son of *Bhairava Simha*.

(iv) *Vardhamāna Upādhyāya*, the son of *Bhavesha* of the *Vilva-Pañcaka* family, the author of the *Daṇḍaviveka*, calls Vācaspati his *guru*. This *Vardhamāna* also had both *Bhairava Simha* and his son *Rāmabhadradeva* as his patrons (vide *Daṇḍaviveka* and *Gangā-*

> *krtyaviveka* respectively). A MS. of his *Gangākrtyaviveka* is found which is dated La. Saṃ. 376, *Pauṣa Vadi* 13 *budhe*. That is, *Vardhamāna* must have lived before La. Saṃ. 376 or 1495-96.

On the basis of these facts, we may say that Vācaspati II also must have lived before 1495. According to the history of Mithilā kings, *Bhairava Simha* had succeeded his elder brother *Dhīra Simha* on the Mithilā throne. *Dhīra Simha* was ruling over Mithilā in about La. Saṃ. 321, that is, 1440 A.D., when a MS. of the *Setudarpaṇī*, a commentary on the *Setubandha*, the *Prakrit* poem, was transcribed—

(परमभट्टारकेत्यादि-महाराजाधिराज-श्रीमल्लक्ष्मणसेनदेवीयैकविंशत्यधिकशतत्रयतमाके (ब्दे?)कार्त्तिकामावास्यायां शनौ समस्तप्रक्रियाविराजमानरिपुराजकंसनारायणशिवभक्ति-परायण-महाराजाधिराज-श्रीश्रीमद्वीरसिंहसंभुज्यमानायां तीरभुक्तौ अलापुरतप्पाप्रतिबन्ध-सुन्दरीग्रामे वसता सदुपाध्यायश्रीसुधाकराणामात्मजेन छात्रश्रीरत्नेश्वरेण स्वार्थं परार्थं च लिखितमिदं सेतुदर्पणीपुस्तकमिति)

(Vide *History of Tirhut*, p. 74.) So *Bhairava Simha* must have ruled after 1440. In other words, *Bhairava Simha* must have ruled between 1440 and 1495. *Bhairava Simha* was succeeded by his son *Rāmabhadradeva* who was a ruler of Mithilā about 1495-96. As Vācaspati lived at the courts of both these kings, he should be naturally placed about the same period. From the long list of his works it is also assumed that he must have lived, like *Vidyāpati Ṭhākura* one of his contemporaries, a very long life. Therefore, he may be easily placed in the last quarter of the fifteenth century.

Vācaspati's religious beliefs.

Regarding the religious faith which Vācaspati had, it may be pointed out that in the *Maṅgala* verse of most of his works he praises Lord *Kṛṣṇa* or *Viṣṇu* or *Hari* and in some he also bows down to *Shiva*. But this matters very little with the Maithila writers. They are naturally worshippers of *Shakti* and at the same time they also worship *Viṣṇu* and *Shiva*. This peculiar *harmonic combination of the Trinity* is the natural faith of all Maithilas. They realise unity amidst diversity and there is never any misunderstanding in their mind about the real nature of these. Hence, no purpose can be served by questions regarding the religious faith of any Maithila scholar.

There is a wrong notion amongst a few Maithilas that there were three Vācaspati Mishras in Mithilā. In fact, there have been only two—the first is the author of the *Bhāmatī*, etc. who is known as the *Vṛddha* Vācaspati, and the other is Vācaspati, the author of the above-mentioned *Dharma-Shāstra* works, who is therefore known as the *Abhinava*. The cause of misunderstanding appears to be that they do not know that the *Dharmashāstrī* Vācaspati is identical with the *Dārshanika* one. They take them to be different persons. It has been shown above on the basis of the verses found in his *Kṛtyapradīpa*, *Shrāddhakalpa*, and *Anumānakhaṇḍaṭīkā* that the *Dharmashāstrī* Vācaspati is identical with the *Dārshanika* Vācaspati.

The English translation of this work was finished by Dr. Jha in December, 1936, but unfortunately the whole translation could not be seen through the Press during his lifetime. He himself could only see the proofs up to page 224. For his translation Dr. Jha had used both the printed text and the MSS. of the *Vivādacintāmaṇi*. Thus:

(1) For the printed text, which he indicates as Pa, he has used the 'Shri Venkateshwara Press', Bombay, Saṃvat, 1955, A.C. 1898, edition.

(2) Another printed edition which he has indicated as Pb is an old edition.

(3) Ma—Paper manuscript, leaves 39, complete, Maithilī script, fairly correct; about 100 to 150 years old—belonging to the writer.

(4) Mb—Paper manuscript, incomplete, leaves 23 extending to about p. 79 of the edition Pa, Maithilī script, belonging to Dr. Jha himself.

Although in the Sanskrit editions the texts have not been numbered, yet they have been numbered here only for purposes of references and criticisms. For the notes he has mostly utilised his own book—'Hindu Law in its Sources', Vol. II.

I consider it to be a great honour that the great master asked me to write out an Introduction for this translation. I did it as he had desired and handed over the Introduction to him while he was in good health, and I was fortunate enough to learn from him that the Introduction met with his approval.

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VIVĀDACHINTĀMAṆI

VĀCHASPATI MISHRA

Introduction

PART (A)—BENEDICTORY

When at the Assembly of Divine Beings, the Mother of Three Worlds arose out of the Milky Ocean with a smile on her lotus-like face, and her eye-brows raised high,—God Viṣṇu accepted her with his glances, and with amorous feelings aroused in Himself by the advent of love, His hands moistened with profuse perspiration,—may God thus circumstanced save us from evil !—(1)

Vāchaspati, having carefully studied the *Kalpadruma* (the *Kṛtyakalpataru* of Lakṣmīdhara), the *Pārijata* and the *Ratnākara* (the *Vivādaratnākara* of Chaṇḍeshvara) and other works,—with his head bowing to the Lord of Lakṣmī (Viṣṇu), is going to compose the *Vivādachintāmaṇi*.—(2)

PART (B)—ENUMERATION OF SUBJECT. HEADS OF DISPUTE

[*N.B.—The Texts quoted in the work have been numbered serially, for purposes of reference*]

On this point, says Manu (8.4–7)—

[1] 'Of these the first is (1) *Recovery of Debt*, then (2) *Deposit*, (3) *Sale without Ownership*, (4) *Joint Concerns*, (5) *Non-delivery of Gifts*, (6) *Non-payment of Wages*, (7) *Breach of Conventions*, (8) *Recission of Purchase and Sale*, (9) *Dispute between Owner and Keeper* (of Cattle), (10) *Boundary-disputes*, (11) *Assault—Physical*, (12) *Assault—Verbal*, (13) *Theft*, (14) *Violence*, (15) *Adultery*, (16) *Duties of Husband and Wife*,* (17) *Partition*, (18) *Gambling and Betting*; these are the eighteen topics that form the basis of law-suits.

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* The right reading is '*Strīpuṅdharmo vibhāgashcha*' as in Manu.

CHAPTER I

Debt

Part (A)—General

Says Nārada—

[2] 'Which debt is payable,—which is not payable,—by whom, when and how it is to be paid,—the rules of giving and receiving,—all this is comprised under the topic of *Debt* (1.1).—When, for the purpose of security and profit, loan is given and taken,—it is called *Loan on Interest.* It is by this that money-lenders make a living (1.98).'

'*Security*'—safety of the Principal; while this remains intact, there is '*profit*', in the shape of Interest.—For the purpose of these, there is '*giving and taking*',—these are acts so understood by both parties. Thus the meaning is that while the Principal remains intact, for the purpose of augmenting it, the creditor *gives,* advances, and the debtor *receives* them on the terms offered; this is called 'Debt'.

In a case where there is no Interest, and the Principal remains as it was,—the name 'Debt' is applicable only in the indirect (figurative) sense; because such a loan is not a means of 'livelihood'. The basis for such figurative use of the name lies in the fact that even such a loan has to be repaid in the same way as the Loan on Interest. This has been made clear under Discourse IV of the *Nyāyasūtra.**

In the case of *Debt* there is 'receiving' of the same thing that has been 'given',—or of something of the same kind. Hence it is that where money is advanced for purposes of trade, it is not 'Debt'.

The exact denotation of the term 'Debt' (*Ṛṇam*) has been thus described by Bṛhaspati (11.2)—

[3] '"Debt" is that loan on interest which—fourfold or eightfold—is unhesitatingly received from a person who is poor (*kutsita*) and suffering (*sīdan*).'

The particle 'or' implies that there is no restriction.†
Says *Kātyāyana*—

[4] 'Nothing on credit should be given to women, to slaves, or to minors; what is advanced to these is never recovered by the man advancing it.'

'*On credit*'—i.e. Loan.

How the recovery of the loan is secured is thus explained by *Bṛhaspati* (11.1)—

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* Under Nyāyasūtra 4.1.59, it is argued that the duties of man are called 'Debts' in the sense that it is necessary to perform them; and under 4.1.60, the *Bhāṣya* clearly says—'The term *Debt* here is not used in the direct primary sense'.

† That is how the 'twofold' also has been permitted. *Debt,* in fact, is to be defined as 'Loan on Interest'; the rest of the text only provides an etymological explanation of the name '*Kusīda*'—(*Vivādaratnākara,* page 5).—Jolly remarks—'The commentators explain that "unhesitatingly" implies that it is sinful otherwise to accept a gift from an unworthy person'.

[5] 'The creditor should advance a loan after having secured a Pledge of adequate value, or a Security with a trustworthy surety, entering it into a bond duly attested by witnesses.'

These have to be secured in order to inspire confidence.—This text is meant to be an advice.—'*Pledge*' stands here for what is given for *being used;*—'Security' stands for things other than * those for use,—such things, for instance, as Gold and the like. This is the distinction between 'Pledge' (*Ādhi*) and 'Security' (*Bandha*).†

Part (B)—Interest

Question :—'What is the exact form of the Interest (derived from Loans)'?

The answer is supplied by *Manu* (8.140)—

[6] 'The Money-lender shall stipulate an interest sanctioned by Vashiṣṭha, for increasing the capital. He shall take monthly the eightieth part of a Hundred.'‡

Vashiṣṭha says as follows—

[7] 'In the matter of Loans on Interest, listen to the rate of Interest sanctioned by *Vashiṣṭha*—It is 5 *Māṣas* in 20; in this morality is not outraged'—(*Vashiṣṭha-Smṛti*, 2.51).

That is, for 20 *Palas*, the interest is 1 *Māṣa*.§

On the point says *Bṛhaspati*—

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* The right reading '*anyat*' is provided by MSS. *a* and *b*.

† The commentators agree in explaining the term '*ādhi*', 'pledge', as denoting a pledge *to be used*, such as, e.g. a cow to be used with her milk, or landed property pledged for its produce. The term '*bandha*', 'security', is supposed to denote a pledge which must not be used: according to the *Mayūkha*, however, it means a pledge not actually delivered to the creditor,—the debtor merely promising not to alienate it. *Jolly*.—'*Ādhi*' thus stands for the transaction commonly known as '*sudbharnā*', and '*Bandha*' for what is known in North India as '*bandhaka*' or '*makbūl*'.—The *Vivādaratnākara* (p. 5) however says—'*Ādhibandhashabdau bhogyādhiparau*'—i.e. 'The terms *ādhi* and *bandha* both stand for the *pledge to be used*'. This can only mean 'pledge capable of being used, in the way in which the cow and the land are used'; and the distinction in that case would be that in the case of *Ādhi*, the creditor would be actually enjoying the usufruct, while in that of *Bandha* he would not be actually doing so. In this explanation, however, golden ornaments and such things would not come in at all.—'*Of adequate value*'—i.e. corresponding in value to the Principal and Interest.—'*Security with a trustworthy surety.*'—In this case, as the creditor would not have the Pledge for use, he would naturally need a reliable surety.—The 'trustworthiness' of the surety should lie in his being more likely to remain accessible than ordinary people—(*Vivādaratnākara*, p. 5).—The *Vīramitrodaya* (Vyavahāra, p. 293) explains '*bandha*' as 'pledge deposited as security with a mutual friend'.

‡ At the time of advancing the loan, he should clearly stipulate the rate of interest—says Medhātithi.—'*Monthly*'—i.e. after the lapse of a month—(*Vivādaratnākara*, p. 7 and *Vīramitrodaya*, p. 296).—'*Sanctioned by Vashiṣṭha*'—as laid down in *Vashiṣṭha-Dharmashāstra* 2.51; and *Vashiṣṭha-Smṛti* 12.29.—'*Ashītibhāgam*'—'of 100 *Kārṣāpaṇas*, the eightieth part would be 20 *Paṇas*'—says *Smṛtitattva*, p. 349; so also *Prāyashchittaviveka*, p. 420.—'The meaning is that when 100 Rupees have been advanced, the creditor should charge 1¼ Rupee after the lapse of one month'—(*Vīramitrodaya*, 91*b*).—'The legal interest per month on every 100 *Paṇas* is 1¼ *Paṇa*; it is 5 *Paṇas* in business-transactions, 10 *Paṇas* for people trading in forests and 20 *Paṇas* for people trading on the seas'—(*Arthashāstra*, p. 64).

§ The 20 in Vashiṣṭha's text stands for 20 *Palas*—(*Vivādaratnākara*, p. 7).

[8] 'The *Māṣa* has been declared to be the twentieth part of the Pala.'

The 'Māṣa', in this context, is equivalent to 16 *Raktikas*; so that for a debt of 20 *Palas*, which would be equal to 4 *Suvarṇas*, the interest in a month * would be 1 *Suvarṇa*, i.e. 5 *Māṣas*, the *Māṣa* being equal to 16 *Raktikas*;—and this 1 *Suvarna* would be the eightieth part of 20 *Palas*; and thus the interest comes to be the eightieth part.—Under *Manu's* text (No. 6 above), for 100 *Suvarṇas*, the interest, after a month, would be 1 *Suvarṇa*, plus 20 *Raktikas* (i.e. 1¼ *Suvarṇa*).†

Even so, this rate of interest applies only to a Loan secured by a Pledge; ‡ as is clear from the following specific declaration § by Yājñavalkya—

[9] 'The eightieth part of the Principal shall be the interest per month, when the Loan is advanced on a Pledge.'—(2.37)

So also *Vyāsa*—

[10] 'The monthly interest has been declared to be the eightieth part; where there is a Pledge,—the eightieth part along with its eighth part || when there is a Surety,—and 2 per cent, when there is no Pledge (or Surety).'

'*Āshītaḥ*' is eightieth part.—'*Sāṣṭabhāgaḥ*'—i.e. the eightieth part along with the eighth part of the eightieth part; so that when the Loan consists of 20 *Palas* of Gold, the interest would be 9 *Raktikās*.¶—'*Nirādhānā*' **—i.e. when there is neither Pledge nor Surety.—'*Dvikam shatam*'—i.e. on 100 *Suvarṇas*, the interest, in one month, would be 2 *Suvarṇas*.—This is for the *Brāhmaṇa*, not for any other caste.††

As says *Manu*—

[11] 'He may charge just 2, 3, 4 or 5 per cent, per month, from the four castes respectively ‡‡—(8.142)

'By taking 2 per cent, one does not incur the sin of extortion.' —(8.141)

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* The right reading is provided by the MSS.—'*Palavimshatitayē māsēna ṣoḍasha*'.

† All this computation in the Text is based upon the understanding that the *Māṣa* is equal to 16 *Raktikas*, for which the sole authority is *Bṛhaspati*. This measure, however, is not the one accepted by *Manu* (8.134) and *Yājñavalkya* (1.36–364) and *Viṣṇu* (4.1–13); according to whom, the *Māṣa* is 5 *Raktikas*,—16 *Māṣas* make 1 *suvarṇa*. For details see notes on *Manu*.

‡ This view has been accepted by *Kullūka* and other commentators on *Manu*; Medhātithi says nothing on this point.—*Vivādaratnākara* (p. 7) and *Vīramitrodaya* (p. 91*b*) agree with the view here expressed.

§ The right reading supplied by the MSS. is '*vishēṣaparayājña* . . .'.

|| For '*Sāṣṭabhāgaḥ*', the *Smṛtichandrikā*, p. 361, reads '*ṣāṣṭho bhāgaḥ*, 'the *sixtieth* past'.

¶ By this, the interest obtained is 2 *Purāṇas*, reduced by 2 *Paṇas* (*Vivādaratnākara*, p. 7).

** '*Nirādhāna*'—'*ādhāna*', 'Pledge', here stands for the Pledge along with the Surety; hence the meaning is that in a case where there is neither Pledge nor Surety, the interest obtained is 2 *Purāṇas* (*Vivā. ra.*).

†† This is for the *Brāhmaṇa*; for the *Kṣatriya* and other castes, the rates have been specially prescribed as 3 or more Purāṇas in *Manu* 8.142.—(Vi. ra.)

‡‡ These rates are to be charged for one year only, not beyond that.—These rates are permissible for the money-lender who could not make a living for his family by advancing loans at the ordinary rate, which is only 1¼ per cent;—or for the small capitalist; or in cases where the borrower is known to be dishonest.—(*Medhātithi*).

In the case of Loans secured by Pledge, etc. also, the rate of interest is enhanced according to the caste. So that when the interest charged from the *Brāhmaṇa* is 1, that charged from the *Kṣatriya* is 1½, from the *Vaishya* 2, and from the *Shūdra* 2½. If the *Vaishya*,—or even the *Brahmaṇa* and others in abnormal times of distress—receives interest, in accordance with this declaration of *Manu*, he does not incur sin; while by charging rates higher than this,—such as 'stipulated', 'compound' and other rates (see Text 13 below),—one causes distress to the debtor and thereby incurs sin. In normal times, if people other than the Vaishya receive either of these two sets of rates (the 2, 3, 4, 5 per cent, or the *compound*, etc;—i.e. any interest more than the 1¼ per cent), they incur sin.

Says *Hārīta*—

[12] 'On 25 Purāṇas, the monthly interest should be 8 *Paṇas*; at this rate, in 4 years and 2 months, the Principal stands doubled. This is a rate of interest that is righteous; by taking this, the creditor does not fall from righteousness.'

In this way, in 50 months, the Principal becomes doubled; beyond that the Principal does not become augmented;—this is what is meant.*

Question :—What other rates of Interest are there, and how many are they?

On this point says *Bṛhaspati* (11.4-5)—

[13] 'Interest has been declared by some to be of four kinds; of five kinds, by others; by others again, of five kinds: (*a*) *Kāyikā* (Corporeal), (*b*) *Kālikā* (Periodic), (*c*) *Chakra* (Compound), (*d*) *Kārikā* (Stipulated), (*e*) *Shikhā* (Hair), (*f*) *Bhogalābha* (Enjoyment, Use).'

And *Vyāsa*—

[14] 'The interest in the form of *milch cattle*, *beasts of burden* and *personal service* is called *Kāyikā*, Corporeal.' †

But *Nārada* [supplies the following definition of the *Kāyikā* interest]—

[15] 'Interest at the rate of one *Paṇa*, or *Half-Paṇa* or more, paid regularly, without detriment to the Principal is called *Kāyikā* '—(1.104)

The term '*Kāya*' (under this definition) stands for the Principal; that Interest which causes no detriment to this Principal,—i.e. which does not reduce it.—'*Regularly*'—i.e. yearly.—'*Paṇardha*'—is one *Paṇa* and a *Half* and so on.—For '*paṇārdhādyā*', *Halāyudha* reads '*paṇavāhyā*', which means 'that which is *vāhya*, capable of accumulating for a hundred years, when the Principal consists of one *Paṇa*'.‡

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* This rule refers to the *Brāhmana* debtor, says *Vivādaratnākara*, p. 8.

† *Vivādaratnākara* (p. 10) takes the compound '*dohya-vāhya-karma*' as standing for the use of *milch cattle* and *beast of burden*. *Medhātithi* on *Manu* 8.153 includes under '*Kāyikā*', *that payable by bodily labour* or by the use of a pledged animal or slave. The translation above has adopted this explanation, as more comprehensive. Jolly also on *Nārada* 1.104 says—'*Bṛhaspati* and *Vyāsa*, derive the term '*Kāyikā*' from '*Kāya*', Body, and explain that it denotes bodily labour, or the use of a pledged slave'.

‡ The *Vivādaratnākara* (p. 10) also has noted this reading and explanation and has rejected it on the ground that this reading has not been adopted by any other *nibandha*. It adds the following notes—'*Kāya*' is the *body* of the Principal.—'*Shashvat-paṇārdhādya*'—what has been fixed at a definite rate—a *Paṇa* and a half and so forth,—fixed once for all by both parties.

It has to be noted here that the *Kāyikā*, Corporeal, Interest, as defined by *Vyāsa* (Text 41 above), would be included under the 'Interest by enjoyment or use' (the sixth kind mentioned by *Bṛhaspati* under Text 13 above),—while as defined by *Nārada* (in Text 15) it is different from that.

[Nārada continues]—

[16] 'That which runs by the month * is called *Kalikā*, Periodic.—(1.103). Interest upon Interest is called *Chakravṛddhi*,† Compound Interest. —(1.104)

Says *Kātyāyana* (defining the *Kāritā*, 'Stipulated', Interest)—

[17] 'An enhanced ‡ rate of interest may be paid when it is one that has been stipulated by the debtor in view of the urgency of his need §; and this is called the *Kāritā*, Stipulated, Interest.—The excessive Interest stipulated in other circumstances, is not payable.'

'In other circumstances'—i.e. to which the Debtor has been made to agree, by force.

Bṛhaspati (11.7), defining the *Hair-Interest*, '*Shikhāvṛddhi*') says:—

[18] 'The Interest that is realised day by day has been regarded as the *Hair-Interest*, (Shikhāvṛddhi); it grows daily like the Hair-tuft, and as the Hair ceases to grow only when the head is cut off, so the Interest ceases only when the Principal has been paid up. This is why it is called the *Hair-Interest*'.|| The Interest of Enjoyment consists in the rent of the House and the produce of land.'

The '*stoma*' of the House is the rent realised from it; or the use of the Bed and other articles of furniture in the House.¶ The enjoyment of the produce of the field that has been pledged is called '*Shada*', 'Produce'; the term being derived from the root 'Shadlṛ' to cut (harvest).**—This has been called also '*Ādhibhoga*', 'use of the pledge'.

What has been just said is only by way of illustration. For says *Kātyāyana*—

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* 'Interest computed month by month is called *Periodic.*'—says a Text. But 'month' here is only illustrative. What is meant is that interest which is not allowed to accumulate, but is realised day by day, or month by month.—Another kind of Periodic Interest is that in which the creditor has stipulated—'If you do not pay the interest at such and such a time, the Principal shall become doubled'—(*Vivāda. R.*).

† Interest charged on interest is called *Chakravṛddhi*, Compound Interest. Others explain the term as 'wheel interest'; in the case of wheeled conveyances, —cart, etc.—interest is paid only for those days on which they are used. So also in the case of beasts of burden—(*Medhātithi* on *Manu* 8.153).

‡ That is, higher than the sanctioned rates of the *eightieth part*, or 2, 3, 4 per cent—(*Vivādaratnākara*, p. 10).

§ The excessive rate may be paid only when it has been voluntarily agreed to by the debtor, not when he has been forced by the creditor to agree to it—(*Vivādaratnākara*, p. 11, and *Vīramitrodaya*, p. 295). This text occurs in *Bṛhaspati* (11.9) also.

|| The *Hair-Interest* is realised *day by day*,—'day by day' standing for that number of days within which the debtor has promised to repay—(*Vīramitrodaya*, p. 294).

¶ The necessary '*vā*' is found in Msb.

** The *Vīramitrodaya* (p. 294) offers a different explanation:—Interest in the shape of the satisfaction derived from residing in the house that has been pledged, and also in the shape of using the grains and fruits and other things produced in the land that has been pledged. 'House' and 'Land' here stand for *immoveable property* in general.

[19] 'Where the whole use or enjoyment of the Pledge has been assigned as the Interest, that transaction represents what has been called the *Interest of Enjoyment.*'

That is, it is a case of 'Interest of Enjoyment' where the stipulation is that 'the using of this article will constitute the Interest'.

Thus then, (1) the *Corporeal* Interest is payable by the year; (2) the *Periodic* by the month; (3) *Compound* Interest is interest on the interest; (4) *Stipulated* Interest is that which has been agreed to under distress; (5) the *Hair*-Interest grows day by day; and (6) *Interest of Enjoyment* consists in the service of slaves, etc. (cattle).

In reference to the *fifth* (Hair-Interest), *first* (Corporeal Interest) and *sixth* (Interest of Enjoyment)—says *Bṛhaspati* (11.11)—

[20] 'Hair-Interest', 'Periodic Interest' and 'Interest by Enjoyment' shall be taken by the creditor so long as the Principal is not cleared off'.

That is, in the case of these three kinds of Interest, if the Principal remains unpaid for a long time, the creditor may realise even more than the maximum interest sanctioned, in the form of 'double' and the like.

Apart from the 'Enjoyment of the Pledge', the debt may not be paid after three generations; as says *Yājñavalkya* (2.90)—

[21] 'The Pledge is enjoyed so long as the Debt is not paid up ;'—

—which means that the Loan with a Pledge should be paid, even by the debtor's great-grandson.*

In continuation of the sentence 'The Creditor shall restore'—*Viṣṇu* says—

[22] 'not the immoveable Pledge, unless there is a special agreement to that effect,—even when the Interest has reached the maximum'—(6.7-8).

That is, unless the Creditor has promised that—'When the Interest has reached the maximum, this Pledge shall be restored',—even though the Interest may have reached the maximum, through the enjoyment of the Pledge,—he should not restore it to the debtor.†

Says *Yājñavalkya* (2.64)—

[23] 'In a case where a Pledge is given on the understanding that it is to be enjoyed after the Principal has become doubled,—the Pledge is to be restored as soon as the profit derived from the Pledge has made up the amount of the doubled Principal.'‡

This also is to be taken as applying to the case where there is such an agreement accepted by the creditor; as it is simpler to take this text along with the above declaration of *Viṣṇu* (Text 22).

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* This is an exception to the general rule that the debt ceases to be payable after three generations—says the *Mitākṣarā*.—What is meant by the text is that even after the interest has reached the 'double' by computation of the enjoyment, —the 'interest' in the shape of enjoyment is to continue—(*Vivādaratnākara*, p. 13).

† Even though the maximum Interest has been realised by the creditor, through the enjoyment of the Pledge, until the Principal is paid up, the creditor shall not give up the Pledge, unless he has previously agreed to surrender it after the lapse of a certain time—(*Vivādanatnākara*, pp. 13-14).

‡ 'This text is applicable to cases where the income from the Pledge is to be taken in lieu of the Interest and also in reduction of the Principal. That is why this is known among the people as *Kṣayādhi*'—*Mitākṣarā*.

From among the six kinds of Interest (enumerated above in Text 13), *four* are not to be realised after one year; as says *Gotama* (i.e. *Gautama*) *

[24] 'One shall not pay (or receive†) interest beyond the year,—nor what is unapproved (or unaccumulated); nor Compound Interest, nor Periodic Interest, nor Stipulated Interest, nor Corporeal Interest.'—(8.153) ‡

It has been declared above by *Bṛhaspati* (in Text 20) that the Corporeal Interest may be taken till the Principal is paid up; but that refers to the Corporeal Interest as defined by *Nārada* (in Text 15, above; as it is only that which can be 'without detriment to the Principal' as stated by *Nārada*). The Corporeal Interest, on the other hand, which is mentioned by *Gotama* (*Manu*) in the text (24) just quoted, is the interest that is payable by *bodily service*,—which is realised through the service of slaves and others; that this is so is held on the strength of its co-ordination with what has been declared by *Bṛhaspati*. Hence the milking of the Cow, etc. is to be enjoyed only till the end of the year.

The four kinds of Interest—Compound and the rest,—which have been forbidden, are to be taken if it has been agreed upon §; such being the implication of the next sentence 'nor what is unapproved' (in Text 24).

As a matter of fact,—(*a*) the receiving, through enjoyment, of interest beyond the 'double', (*b*) the realising of Compound Interest, and (*c*) when the Principal with accrued Interest has become doubled, then to treat this double account as the Principal and the realising of further interest on this new Principal,—all this is unrighteous: it is not meant that these are not payable at all; because that they are payable has been declared by *Bṛhaspati* (Text 13 above).

This is the reason why *Bṛhaspati* (11-12) says—

[25] 'To continue to retain and enjoy the Pledge after the double of the Principal has been realised from it, to charge Compound Interest, and

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* This should be *Manu*; as the text is actually *Manu's*, 8.153. The same idea is found in *Gautama* also (12.30, 34-35), but the words there are different.

† Though the prohibition is addressed to the debtor ('shall not *pay*'), it is really meant for the creditor.—Or '*nirharèt*' may itself mean 'receive'—(*Mitā.*).

‡ The interest that has been sanctioned in connection with all castes—at the rate of 5 per cent—shall be realised for one year only, and not after the lapse of a year. Or the meaning may be that no interest shall be realised during the year. .... Or the meaning may be that at the time of the transaction itself, it shall be determined whether the interest shall be computed monthly or yearly ...... '*Unapproved*'—not sanctioned by the scriptures; but as this has been already prohibited under 8.152, '*adṛṣṭā*' should be taken as 'unaccumulated'; the meaning being that interest shall not be received by the day or by the month,—until it has accumulated during several months'—*Medhātithi.*

§ The question is raised—why should there be a special prohibition of the 'Compound' and other Interests, when the rates of Interest payable have been definitely laid down as 2, 3, 4, 5 per cent.—The answer given by *Medhātithi* is that this prohibition itself indicates that such Interests also are permissible under special circumstances; as laid down in *Yājñavalkya* and other *Smṛtis.*

Shukranīti says—'Creditors deprive people of their property by means of the Compound Interest; the king should protect the people from them'—(4.5.633).

Vivādaratnākara (p. 9) says—The meaning of the Text is that if the creditor, suspecting an early repayment of the loan, should stipulate that the loan must continue for a certain time, then he cannot stipulate thus for more than a year.—*Halāyudha*, however, holds the meaning to be that, however much be the eagerness of the Creditor to earn much Interest, he should receive payment before one year passes, and not beyond that.—Nor should he receive interest that is '*adṛṣṭa*, not sanctioned by the scriptures. The Interests not sanctioned are the Compound Interest and the rest.

The *Kṛtyakalpataru* adds the explanation that the Interest is to be calculated from the first month up to the end of the year—not beyond that.

to realise the Principal along with Interest accrued (at the time of returning the Pledge),—all this constitutes *Usury* and is censured.'*

The taking of Interest beyond the double, the taking of Interest on Interest, adding the Interest to the Principal and then treating and realising it as Principal,—all these three transactions have been condemned,—says the *Gṛhastharatnākara*.

Part (C)—Unstipulated Interest

Says *Kātyāyana*—

[26] 'If a man, having taken a loan, goes away when asked to repay it, then Loan begins to yield interest after three months.'

'*Uddhāra*', 'Loan', here stands for ordinary Loan, without interest. After repayment has been asked for, interest begins to accrue after three months.†

Again—

[27] (*a*) 'Having purchased a commodity, if the purchaser goes away, without paying the purchase-money, then interest begins to accrue on that money, after three seasons.'‡

(*b*) 'Deposit, Balance of Interest, Commodity sold, and Purchase-money,—if these are not delivered on demand, they begin to yield interest at the rate of 5 per cent.'

'*Kraya*' is article sold.—'*Vikraya*' is purchase-money. 'After three seasons' has to be construed with this second text (*b*) also.—The upshot§ of the whole thus is that, in the case of a Deposit, Balance of Interest, Purchase-money or article sold,—not being delivered when demanded,—after six months (which constitute *three seasons*), interest at the rate of 5 *Paṇas* per cent has to be paid *by the Shūdra*; this restriction (to the *Shūdra*) being due to the different rates of 2, 3 and 4 having been prescribed for the other castes (see Text No. 11 above).

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* It is censured—even though sanctioned by the scriptures—says *Vivādaratnākara*.

† Kātyāyana appears to have laid down several rules: (*a*) In one text he says —'If a man, having taken a loan, goes away without paying it,—that loan begins to bear Interest *after one year*'. This however has been taken by *Vīramitrodaya*, p. 302, to refer to cases where no payment has been demanded during the year.—(*b*) In another text, he says—'If the man, while remaining in his own place, does not repay the loan on demand, he should be forced to pay Interest, even though it had not been stipulated'.

‡ *Vīramitrodaya* (p. 302).—This refers to cases where no demand has been made by the vendor. In a case where the demand has been made, but no payment made, Interest begins to accrue from the date of demand (see Text *b* below). *Smṛti-chandrikā* (p. 363).—The rate of Interest chargeable in this case would be the *eightieth part*.

§ This does not appear to be the opinion of other authorities: For instance, *Parāsharamādhava* (p. 169) says that this is an *exception* to the general rule laid down by *Nārada* that 'even unstipulated Interest begins to grow *after six months*', and *Vivādaratnākara* (p. 15) says—What is meant is that if the vendor fails to deliver, on demand, the commodity sold,—or the vendor fails to pay, on demand, the purchase-money,—both become liable to pay Interest at the rate of 5 per cent. —Both these appear to hold the view that Interest begins to accrue immediately after the demand, not *after six months*, as stated by *Vivādachintāmaṇi*.

Kātyāyana * again—

[28] 'A loan advanced through affection should not yield interest, unless repayment has been demanded. If, on demand, it is not paid, it shall yield interest at the rate of 5 per cent.'

'*Prītidattam*' is Loan advanced on account of affection.

In this case, Interest begins to accrue after the lapse of three months;† in accordance with the above-mentioned statement of *Kātyāyana* (Text 26).

Says *Nārada* (1.108)—

[29] 'No interest should ever be realised on what has been given through affection, unless it has been stipulated.‡ Even without an agreement, interest does accrue in such cases after the lapse of half a year.'

'*Dattānām*'—The '*dāna*' here stands for mere giving (without any talk of repayment); § hence there is incompatibility in this text with the period of 'three months' spoken of above (in Text No. 26), where '*regular loans*, are meant.

Again (says *Kātyāyana*)—

[30] 'If a man, having taken a loan, goes away without repaying it, that loan begins to bear interest after three seasons.' ||

The 'going away' is not meant to be an essential factor, as is clear from the following (from *Kātyāyana*)—

[31] 'Even while remaining in his own place, if the man does not repay the loan, on repeated demands,—then, he should be made to pay, even against his wish, interest,¶ even though it may not have been stipulated.'

This however should be understood to refer to cases where the man has gone away through dishonest motives.

In a case where the man has gone away on important business, and not through dishonest motives,—it should be as declared by *Viṣṇu* in the following text—

[32] 'On the lapse of a year, they should pay the sanctioned Interest,** even if not stipulated.'—(6.4)

'On the lapse of a year'—i.e. after one year.

The upshot of the whole is as follows:—In all these cases,—of Purchase-money, Deposit, etc., if payment is withheld, even on demand—through dishonest motives,—Interest begins to accrue after *six months*; while in cases where there is no dishonest motive, it does so after *one year*.

Says *Nārada* (2.36)—

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* This same Text occurs in *Nārada* 1.109 also.

† Other commentators do not accept this view. *Asahāya* (on *Nārada*) and *Vīramitrodaya* hold that this loan shall yield Interest at the rate of 5 per cent *from the day of the demand.*

‡ *Aparārka* explains '*anākāritam*' as 'not demanded'.

§ This is the explanation added by *Vīramitrodaya* (p. 301). It adds—Where the loan is taken without any understanding as to the time of repayment, Interest begins to accrue after six months.—So also *Parāsharamādhava* (p. 168).

|| According to another reading, found in *Vīramitrodaya*, p. 302, the period is 'one year'. *Vivādaratnākara*, p. 16, reads as here.

¶ In this case the Interest payable is 2, 3, 4 or 5 per cent (according to the caste of the debtor—(*Vivādaratnākara*, p. 16).

** That is, at the rate of 2, 3, 4 or 5 per cent, according to the caste of the debtor—(*Vivādaratnākara*, p. 16).

[33] 'Price of things bought, wages, deposits, fines, what has been attained by fraud,* improper gifts, etc., and winnings at dice,—these do not bear Interest, unless so stipulated.'

The Interest that has been declared payable under *Kātyāyana's* text (No. 27 above), relating to Deposit and Purchase-money is in reference to the case where the debtor has gone away through dishonest motives.†

[In Text 33]—'*Bhṛti*' is *wages*;—'*ābhihārikam*'—what has been obtained by fraud or force;—'*vṛthādānam*'—what has been promised, without any religious motive;—'*ākṣikapaṇa*'—winnings at gambling, etc. ‡

Says *Samvarta*—

[34] 'There is no Interest on '*Strīdhana*', on Interest already earned, on Deposit that has retained its condition, on what had been in doubt, or on what has been due from a Surety;—unless it has been voluntarily stipulated.' §

'*Strīdhana*'—the Wife's property spent by the Husband through love and affection.

Similarly, having spoken of the 'Husband, Son ‖ and others', the same writer says:—

[35] 'If any one of these (Husband, Son and others) uses the *Strīdhana* forcibly, he should be made to pay the Interest, and he should also suffer punishment. If, however, he uses the same lovingly and with her consent, he should be made to repay the Principal only,—whenever he may happen to have the wherewithal to pay it.'

PART (D)—THE MAXIMUM INTEREST ALLOWED

Says *Vyāsa*—

[36] 'What is due from the Surety, the loan whereof the Pledge has been enjoyed (used up), that which has been offered (by the debtor) but not

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* The translation adopts the reading '*yachchābhihārikam*' which has been adopted by *Vivādachintāmaṇi* and *Vivādaratnākara* (p. 20). Other digests read '*yashcha prakalpitaḥ*' which means '[the fine] that has been imposed'.

† The MSS. *a* and *b* read this passage differently—'*tachchhadmapravēshitaparam vṛddhāvapyēvam*' (Ms. A), and '*tachchhadmanāpravēshitaparam vṛddhāvapyevam, achchhadmanāpraveshitaparam vṛddhēvapyevam*' (Ms. B). It is best as in the printed text.

‡ The 'Price of things bought' and 'Deposit' in this text stand for other than those that have not been repaid on demand; as for those the Interest payable has already been laid down before.—'*Fine*'—here stands for the Highest Amercement and the rest.—'Improper gift'—what has been offered, not actually given, without any religious motive.—'*Vivakṣita*' is Interest agreed upon by both parties. In cases where they have already agreed upon the rate of Interest payable, that has to be paid of course—(*Vivādaratnākara*, p. 20).

§ '*Strīdhana*'—the six kinds of it as defined in law—which has been borrowed by the husband.—'*Deposit, etc.*'—the deposit meant here is other than the one that has not been restored on demand.—'*What has been in doubt.*'—In regard to which there had been a doubt as to whether or not it was payable, or it was only subsequently decided that it was payable.—'*Unless, etc.*'—if stipulated, it has to be paid in these cases also—(*Vivādaratnākara*, p. 20).

'*Deposit, etc.*'—i.e. which has not changed hands.—'*From a Surety*'—i.e. from the man who had stood security for the repayment of the debt—(*Parāsharamādhava*, p. 170).

‖ The right reading is '*bhartṛ-putrādīn*' as in both MSS.

accepted (by the creditor), Fines, the Wager and the Promised Gift,—all this does not yield Interest; nor when the debtor is held under restraint. As regards the amount due from the Surety, he has to pay only the double.'

That is, in the case of the security-account, it does not become doubled (by the accruing of further interest).

'*Bandha*' stands for the Pledge *to be kept.*—'*Prapanna*'—one who is kept under restraint by the creditor. *—'*Shulka*' stands for the amount that had been stated.—'*Pratishruta*'—the gift that has been promised. This last must refer to the *Improper Gift*, as it is simpler to take it thus in view what has been declared by *Nārada* above (under Text 33).

Says *Yājñavalkya* (2.44)—

[37] 'If the creditor does not accept the loan he had advanced,—when it is being repaid to him,—it should be deposited with a middle-man (neutral party); and thenceforth, it ceases to yield interest.'

Gotama (12.33)—

[38] 'The debt of the man held under restraint does not yield Interest.'†

That is, it ceases from the day of the restraint.‡

The question that arises next is—If the debt remains unpaid for a long time, to what extent does it increase?

In answer to this, says *Gautama* (12.31)—

[39] 'If the loan remains outstanding for a long time, the Principal becomes doubled.'

That is, even though the time elapsed might justify even the *trebling*, etc. of the Principal, the *doubling* of it is all that is allowed.

This applies only to the case of Gems and such things.§

In this connection, *Manu* (8.151) lays down certain special rules:—

[40] 'Interest on ‖ loan taken ¶ at one ** time shall not exceed the

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* *Vivādaratnākara* (p. 21) takes '*Shulkam pratishrutam*' together and takes it to mean 'the fee that one has agreed to pay'.

† The meaning is that—'the debt of a debtor who, being desirous to pay, is imprisoned by the king or others,—who is thus unable to pay—does not increase from that date'—*Haradatta* (commentary on *Gotama*).

‡ The right reading is '*avarodhadināt na vardhate*'—as in the two MSS.

§ According to *Vivādaratnākara* (p. 17), however, this refers to ordinary loan-transactions.—See below for further notes on this point.

‖ There is some confusion regarding the exact meaning of the term '*Kusīdavṛddhiḥ*'. Curiously enough the *Vivādachintāmaṇi* restricts it to the loan of *gems and such things.*—*Medhātithi* however takes '*Kusīda*' in the sense of '*monetary* loans', the advancing of money for earning Interest. He goes on to say—'or the money advanced may itself be called *Kusīda*'.

¶ '*Taken*'; the word in the text is '*sakṛdāhṛtā*'; it is so read by *Vivādachintāmaṇi*; which however notes later on the other reading '*sakṛdāhitā*', which it says is 'wrong reading' ['*apapāṭhaḥ*' as read in the MSS.]. '*Āhṛtā*' means *taken, borrowed*; while '*āhītā*' means the *stipulated* (Interest). The reading '*āhṛtā*' is not accepted by *Medhātithi*, who remarks—'If the word is read as *āhṛtā*, then the exact signification of '*sakṛt*' becomes doubtful'.—It is not easy too to construe '*āhṛtā*' in the feminine (which should qualify the *loan*, *kusīda* which is what is *taken*). '*Āhīta*', 'stipulated', therefore, should be accepted as the right reading.

** The exact signification of the term 'stipulated at one time' has been thus explained by *Medhātithi* :—'This phrase has been added with a view to the renewal of loans; even after the Principal has become doubled, if the creditor is willing to earn further Interest, and the debtor also wishes to retain the money for the purpose

double.* In the case of Grains, Fruits,† Wool ‡ and Beasts of Burden, it shall not go beyond the quintuple.' §

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of carrying on some larger business, he renews the bond, entering, as the new Principal, the former Principal along with the Interest accrued up to date, and thenceforward, it is on this new Principal that Interest begins to accrue; so that the original Principal, though already doubled, continues to grow further.—It also continues to grow further when transferred to another party.—All these cases are excluded from the purview of the present rule by the phrase "stipulated for the first time".—Some people have held that this rule refers to a case where the whole amount of Interest accruing during the year is paid at one time. But this is not acceptable.'

Aparārka (on *Yājñavalkya* 2.39) remarks on this text of *Manu*:—What the phrase *at one time* means is that even after the Principal has become doubled, the Interest may, with the consent of the debtor, be added on to the Principal and thus it will go on growing further. This applies to loans of gold.

Mitākṣarā (on *Yājñavalkya* 2.30) has the following remarks:—'This rule applies to cases where the loan is advanced *at one time* and also repaid *at one time*. If the transaction is renewed either between the same parties or through a third intermediary, then,—after the adjustment of the loan-account, by addition and subtraction, the new Principal becomes the subject of a new transaction and as such, begins to earn further interest.—Even where the original transaction stands and continues,—if the creditor has gone on realising his Interest either daily or monthly or annually,—there is no chance of his dues (Principal and Interest) becoming *doubled*; so that in such cases, the Interest does continue to accrue even when after what has been realised is actually the double of the Principal.'—According to *Mitākṣara* then, the present rule is applicable to cases where the entire loan has been advanced *at one time* (not from time to time), and the repayment also is made *at one time*, after the accounts have been made up after the lapse of some time, and the payment thus, of the entire Principal along with the accrued Interest, is received *at one time*; so that the total amount received does not exceed the double of the Principal.

The *Vyavahāra-mayūkha* (p. 171) agrees with this view.

* '*Double*'.—The exact words of *Manu's* text are—'*Vṛddhiḥ dvaiguṇyam nātyēti*', 'the *Interest* shall not exceed the double'; and if it is the *Interest* that is to become *double*, then such an Interest, along with the Principal, would make the amount payable *treble* of the Principal, which is not what is intended.—Medhātithi has met this difficulty in the following manner:—In the compound '*dviguṇa*', the term '*guṇa*' stands for *fold* or *part*; and when we come to look out for the *whole* of which it is a part, it is the *Principal* which, from the context, appears to be that *whole*. Hence when the Text speaks of the 'double', what is meant is the double of the capital advanced.—That this is the real intention of the law is clear from the text of *Yājñavalkya* (2.64)—which says that 'The Pledge is to be redeemed when the *Principal* has become doubled',—and that of *Gautama* (12.31), which says—'When there is delay the *capital* advanced shall become doubled'.

† '*Sada*' has been explained by *Vivādachintāmaṇi* as '*Shasya*', 'what is harvested'. This however does not appear to be right; as 'grains' ('*dhānyam*') also are *harvested*.—*Medhātithi* explains it as '*fruits* of trees', because (he says) *grains* here are mentioned separately.—*Vivādaratnākara* (p. 17) explains it as '*fruits* growing on trees'.

‡ '*Lava*',—says *Mēdhadithi*—stands, *among northerners*, for *wool*.—*Vivāda-ratnākara* (p. 17) explains it as 'the wool growing on sheep, etc.'.

§ '*Quintuple*'—*Medhātithi* adds the following notes:—Another *Smṛti* text (*Nārada*, p. 107) lays down 'quadruple' in the case of *grains*. The law on this point is as follows:—If the money-lender has become reduced to poverty and the debtor has become opulent,—having earned much wealth by means of the grain borrowed, —then it is to be *quintuple*, and in other cases, it is only *quadruple*'.

Vivādaratnākara (p. 17).—In the case of these things, it may so happen that the man has borrowed a *hundred* at the usual rate of 2 or 3 or 4 or 5 per cent; but after the lapse of a long time, he is not able to pay more than 500; then this is all that is payable.—In regard to *grains*, *Bṛhaspati* has placed the limit at *quintuple*; *Viṣṇu*, *Marīchi*, *Vashīṣṭha* and *Hārīta* at *triple*. The exact amount payable, under the circumstances, is to be determined either by the circumstances of the debtor, or by considerations of the high or low prices at which grains are selling at the time. So also in the case of other things.

That is, in the case of Gems and such things borrowed for the first time, the Interest is only double;—and in the case of Grains and other things, the Interest is quintuple.

Thus the sense is that when the loan-transaction is entered into more than once, the Interest may be more than double.—Such appears to be the view of the *Ratnākara* and others also.—The reading '*āhitā*' (in place of '*āhṛtā*') therefore is not right.

'*Vāhya*'—Beasts of Burden; such as the ox and the like.—'*Shada*' is what is harvested.—'*Lava*' is what is clipped, shorn, e.g. wools, except that of sheep.

That in the above text, the *Sheep's wool* is not excluded is shown by the exception ['*apavādaka*' as in MSS.] provided by *Kātyāyana*—

[41] 'Of gems, pearls, corals, gold and silver,—the Interest stops at the double; also on fruits, silks and wool.'

And *Gautama* (12.36)—

[42] 'On animal-products, wool, field-products and beasts of burden, the Interest shall not exceed the quintuple.'*

'*Animal-product*' here stands for milk and other things, with the exception of Clarified Butter; as is indicated by the following text of *Kātyāyana*—

[43] 'For all oils, wines and Clarified Butter,—as also of molasses and salt,—the Interest has been declared to be *octuple*.'

Says *Bṛhaspati* (11.13)—

[44] 'On gold, the Interest may make it double; on clothes and base metals, treble; on grains, quadruple; so also on field-products, beasts of burden and wools.'

'*Shada*', 'field-product', here stands for produce of land, other than grains,—such as fruits and the like.†

Viṣṇu—

[45] 'On *Rasas* (liquids, flavouring substances),‡ it is octuple (6.14); on females and cattle, the Interest is in the shape of their progeny.'—(6.15)§

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* *Vivādaratnākara* (p. 18) includes Clarified Butter also;—'*field-products*'—grains, like barley, wheat, etc., and also plantains, mangoes and other fruits.

Haradatta (says Buhler) mentions another explanation of this text of Gautama's: 'If products of animals, etc. have been bought and the price is not paid at once, that may increase five-fold by the addition of Interest, but not to a greater sum.'

† 'Gold' here stands for Gold and Silver, '*Kupya*' stands for all metals other than Gold and Silver, i.e. Copper and the rest.

‡ Such as Cane-juice and the like—says *Vivādaratnākara*, p. 19.

§ The compound '*pashustrīṇām*' has been taken to mean 'cattle and females (slave-girls)', or 'female cattle'. *Aparārka* and *Mitākṣarā* take it in the latter sense.—When female cattle is lent out on Interest, its progeny is to be the sole Interest payable,—says *Aparārka*.—*Mitākṣarā* says—The lending out of cattle is done by persons desirous of having it maintained and obtaining its offspring; and the receiving of such cattle on loan is done by those who are desirous of tending the cattle and obtaining the milk.—*Vishvarūpa* adds that the Text may be taken to mean 'cattle' *and* 'females',—the latter standing for *slave-girls*.—According to *Smṛti-chandrikā* (p. 362) *females* stand for slave-girls; it adds that if there is no progeny, the only Interest obtained is in the shape of the maintenance and safety of the property lent.—*Vivādaratnākara* (p. 18) has the following notes:—'Females'—slave-girls and the like, '*cattle*'—cow, she-buffalo, etc.—are handed over by the owner who is unable to maintain them, to another person, for the purpose of having

Bṛhaspati (11.14-15)—

[46] 'On pot herbs, it has been declared to be quintuple; sextuple on seeds and sugar-cane; octuple on salt, oil and spirituous liquor; also on molasses and honey;—if the loan has been of long standing.'

The *octuple* (laid down by *Viṣṇu* in Text No. 45) in connection with *Rasas* (Liquids or flavouring substances) should be taken as referring to the salt, etc., because these have been specifically named in the present text.*

In another Text, *Vashiṣṭha* (2.46-47) has laid down 'treble' (in connection with *Rasas*):—

[47] 'Double in Gold; treble in Grains; the same with *Rasas* (Liquids, or Flavouring Substances), as also flowers, fruits and roots; octuple on articles held by the balance.'

This 'octuple' must be understood to be applicable to things other than Gold and the like; as in regard to these special rates of Interest have been specially prescribed.†

Says *Bṛhaspati* (11.16)—

[48] 'On grass, wood, bricks, yarns, substances from which spirituous liquor is extracted, leaves, bones, skins, weapons, flowers and fruits,—there is no Interest prescribed.' ‡

'*Kiṇva*' is what forms the basis of the *Paiṣṭī* liquor.—'*Hēti*' is weapon.

This rule is meant to prohibit the charging of interest in the case of these articles, if it has not been stipulated; in cases however where, on account of the exigencies of business, the Debtor has agreed to pay Interest, it is payable of course. It is for this reason that under Text No. 41 *Kātyāyana* has spoken of 'double Interest' on 'field-products, silk and wool', and under Text No. 47 *Vashiṣṭha* has spoken of the 'treble Interest' in connection with 'fruits, flowers and roots'.

In connection with *grains*, there are several rates of Interest, according to the value of the grain advanced. For instance, if the price of the grain *after harvest* is only a little less than the price at the time of the advancing of the loan and at the time *before the harvesting*,—the Interest would be 'double'; while if the price after harvest is much less, it would be 'quadruple'; and if it is still lesser, it would be 'quintuple'.—All that is said in this connection with regard to the Interest becoming 'double' and the rest, means that it is the Principal § that becomes so *doubled*, etc.; as no lapse of time is mentioned in the texts.

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them maintained and obtaining their progeny; the understanding being that the keeper shall enjoy the services of the slaves and the milk of the cattle. If this arrangement continues for a long time, the only Interest payable is in the form of Progeny; there is no other Interest.

* But *Vivādaratnākara* (p. 19) has taken '*rasa*' to mean *Cane-juice*, etc.

† '*Articles held by the balance*'—such as Camphor and the like—says *Vivādaratnākara* (p. 18), and it adds that this refers to those 'articles held by the balance' the rates of Interest upon which have not been specially laid down.

This rule relates to those countries where the custom is that in the case of grains, Interest can extend only to the *Treble* and so forth; or to cases where the Debtor is very poor—(*Vīramitrodaya*, p. 298).

In this matter the exact rule to be applied to any particular case shall be determined by the capacity of the Debtor and also the condition of the times—whether there is famine or not, and so forth—(*Mitākṣarā* and *Parāsharamādhava*, p. 171).

‡ By another reading noted in several digests, the meaning is that 'Interest does not cease',—i.e. it goes on accruing indefinitely. This is more in keeping with *Vashiṣṭha*.

§ The right reading '*mūlamātra*' is supplied by Mb.

Says *Hārīta* (in regard to the variability of Interest according to the price of the grain)—

[49] 'At the time of the new harvest, grain becomes double; it may rise up to treble.' *

That Interest is determined by the price of things is indicated by *Manu* also in the following Text—

[50] 'As regards the exact amount to be paid, the Interest shall be that which is fixed by persons expert in sea-voyages, and those capable of calculating the profits in connection with particular places and times' —(8.157) †

Knowing that there is much profit from trading on the seas, they fix a higher rate of Interest on loans relating to it.

To the same effect *Hārīta* also—

[51] 'According to some people, the rate is one *Paṇa* per month on each *Purāṇa*.' ‡

Nārada also has declared as follows—

[52] 'This is the general rule for Interest payable on loans. There are special rules according to the local usages of the country where the loan-transaction has taken place. In some countries, the loan may grow till the double of the Principal has been reached; in other countries, it may grow till it becomes treble, or quadruple, or octuple'—(1.105-106).§

For instance, in some other country it may be that the amount that fetches a seer (of grain) before the new harvest, fetches four seers after the harvest; when there is such knowledge of the effects of time and place,—and accordingly Interest accrues even after the Principal has reached the *double*, etc. [read '*dvaiguṇyēpi lābhaḥ*' as in MSS.]—these latter alternative rates

* At the advent of the new harvest,—even though only two or three months might have elapsed since the advance was made, the grain becomes doubled. If it is not repaid at the new harvest, then it goes on to increase up to *Treble*; beyond that it does not rise—says *Vivādaratnākara*, p. 12.

† '*Sea-voyage*' stands here for all tradesmen.—'*Places and times*'—those who know that trading in such countries brings such profits—(*Vivādaratnākara*, p. 11; also *Kṛtyakalpataru*).

Medhātithi—'Sea-voyage' has been mentioned only by way of illustration. What is meant is that whatever Interest is fixed by traders who know all about journey by land and water should be determined as the exact amount to be paid. —Some people have taken this text as supplying the answer to the question—'In a case where the Debtor has entered into a contract on the strength of profits to be made at a particular place and time,—but on reaching that place, he does not make that profit—what is the amount of Interest that he should pay?'—The answer is that in such a case the King shall decide as due that amount which may be fixed by those tradesmen who know each other's circumstances and the chances of profit and loss.

Dealers on the seas should pay 20 per cent—says the *Arthashāstra* (p. 64).

‡ According to the *Vivādachintāmaṇi*, this rule is to be taken as fixing the rate of Interest in accordance with the value of the commodity traded in.—Not so *Vivādaratnākara* (p. 11), according to which it lays down a different rate of Interest for Debtors of 'mixed castes'. This is the opinion that *Vāchaspati* has in view in his notes after the next text.

§ According to *Asahāya*, what *Nārada's* text means is that where local customs obtain, differing from the rules previously given, they have to be followed;—which favours *Vāchaspati's* former explanation.

are payable; or these rates may be taken as applying to the four castes respectively.

Or in Text 51 above, in place of '*māsam*', we may read '*tūlam*' *; the meaning, in that case, would be that in two or three months the quantity of cotton payable would be 'double'; when more time elapses, the grain payable may be *treble*; but in the case of *Purāṇa* (gold coin, standing for monetary transaction in general) the Interest would go by *Paṇas*.

The *Ratnākara* says this rule applies to the 'mixed castes'. Cultured people hold that in the case of grains, the trebling or quintupling is due to the length of time.

PART (E)—PLEDGE

Says *Nārada* (1.117)—

[53] 'That to which a title is created is a Pledge (*Ādhi*); it is to be understood to be of two kinds: (1) That which must be released within a stipulated time, and (2) that which must be retained till the debt has been discharged.' †

'*Anyataḥ*' stands for 'the other kind'.
Again, says *Nārada* (1.125)—

[54] 'The Pledge should be treated as it was delivered; if the Pledge is destroyed, there is loss of Interest; similarly if, through the negligence of the Creditor, the Pledge becomes damaged.'

'*Viparyaya*' is Destruction.—'*Vikṛti*' is Damage,—breaking for instance. What is meant is that when there is loss or damage of the Pledge, through the negligence of the Creditor, there is forfeiture of the Interest.‡

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* Ma and Mb read throughout this passage '*tūlam*' for '*tūnam*' in the printed text. That is the reading that we have adopted.

† According to *Asahāya*, the Pledge to be released within a stipulated time is again of two kinds:—It may either be deposited with a 'Keeper of Pledges' (*Ādhipāla*; the modern Official Assignee ?) who is to return it to the Debtor at the stipulated time; or it may be delivered to the Creditor himself on the condition that it is to be returned after the lapse of a certain period. The usufruct of 'the Pledge to be detained till the debt has been liquidated' shall belong to the Creditor—till the debt has been wholly paid up.

Says the *Mitākṣarā* (under *Yājña*. 2.57)—At the time of depositing the Pledge, the Pledger stipulates—'I shall repay the debt at the time of the *Diwalī* and redeem this Pledge; failing this, the Pledge will become your property';—this is the first kind of Pledge;—it is of the second kind when no such time is specified for resumption and the Pledge remains with the Pledgee, *as a Pledge*, till the debt is discharged; till then he keeps the Pledge in his custody.

‡ By damaging the Pledge, the Pledgee forfeits the Interest; i.e. he loses the produce of the land and the use of the dwelling-house—(*Asahāya*).

The Pledgee shall preserve the Pledge; if, through his negligence, the article is lost or damaged, the Creditor loses the Interest—*Vivādaratnākara* (p. 22).

So also *Vīramitrodaya*, p. 306 and *Smṛtichandrikā*, p. 327; according to the latter, the text quoted contains two statements—(1) If the Pledge becomes lost, the Pledgee loses all his Interest, and (2) If the Pledge becomes damaged and is restored to the Pledger in the damaged condition, the Creditor loses his Interest. It proceeds—This rule applies to cases where the Interest accrued is sufficient to restore the Pledge to its pristine form.—'*Negligence*' stands for causes other than *use* by the Pledgee;

So also *Kātyāyana* [this is the same as *Yājñavalkya* 2.59]—

[55] 'If the *Pledge to be kept* is used, there is no Interest;—* so also if there is any loss or damage of the Pledge given *to be used*. If it is lost or damaged,—except by an act of God or of the King,—it must be made good.' †

Says *Manu* (8.143)—

[56] 'In the case of the Pledge *to be used*, the Creditor shall receive no Interest.' ‡

The term '*sopakārē*' in these texts means 'on being used'. Mere *use* of the Pledge being sufficient to bring about the forfeiture of Interest, the mention of *loss or damage* (in Text 55) simply adds another reason,—both the reasons conjointly serving the same purpose.§—The meaning thus is that if any sort of Pledge becomes unfit for use,—by any act of the Creditor,—the Interest becomes lost.

Again—

[57] 'The fool who, without the owner's permission, uses the Pledge, shall have to remit half the amount of the Interest as Compensation for such use'—(*Manu* 8.150; also *Nārada* 1.128).||

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what is meant is that, if the Pledge is damaged by such other causes, the Pledgee shall either restore it to its pristine form or lose his Interest; while if the Pledge given for being *kept* has been damaged by *use* by the Pledgee, then the Pledgee shall both lose his Interest and return the Pledge after restoring it to its original form.—'*Damage*' stands for diminution, transference, deterioration and such other contingencies as tend to alter the character of the article.

According to *Arthashāstra*, 'the Pledge has to be restored on the payment of the debt, in the same condition in which it was pledged'.

* According to the explanation provided by *Vāchaspati* below, of the word '*sopakārē*', the meaning of the second sentence would be—'So also if the Pledge is *used and damaged*'. But no other writer has taken it in this sense; neither any commentator on *Yājñavalkya*, nor any digest-writer; all of whom are agreed in taking it as translated above. The same term '*sopakārē*' occurring in *Manu* has been taken as above,—not as *Vāchaspati* takes it.

† '*Pledge to be used*'—such as utensils.—'*Damaged*'—rendered unfit for use by an act of the Creditor.—'*Sopakārē*'—i.e. such things as Bullocks and the like, where there is no Interest payable, except the *using* of the Pledge.—'*Naṣṭaḥ*'—damaged, spoilt, broken or otherwise rendered useless;—'*vinaṣṭaḥ*'—totally destroyed. In both cases the Pledgee has to restore the Pledge either by paying its price or by other means—(*Vivādaratnākara*, pp. 23 and 25).

If the *Pledge to be used*—such as the Bullock and other useful and helpful articles—has been *naṣṭaḥ*, damaged, changed for the worse, it should be restored to its original condition and then restored; and the Interest, if any, becomes forfeited;—if it is '*vinaṣṭaḥ*', totally destroyed, it shall be made good to the Pledger by paying its price.—The meaning of the first sentence is that 'if the Pledge *to be kept* is used, there is no Interest to be paid'—(*Mitākṣarā*).

‡ 'Pledge to be used' is of two kinds: (1) That in which the profit consists of some form of product of the pledged article; e.g. the milch cow; and (2) that which is used as it stands; e.g. wrought gold and such articles. If '*sopakāra*' here stands for the *Pledge to be used*, the rule is that while such Pledge is being used by the Creditor, he shall receive no Interest.

'*Sopakārē*' is *Pledge to be used*—says *Smṛtichandrikā* (p. 325).

§ This explanation of '*sopakārē*' is against all other authorities.

|| *Medhātithi* says (on *Manu* 8.150)—This rule is applicable to cases where the Creditor makes only partial use of the Pledge,—distinguished from cases of total appropriation, which has been dealt with under 8.144. By partial use the article only becomes deteriorated; hence the Creditor forfeits half the Interest. In a case however, where the Pledge consists of new clothes and such articles, these, on being used, become spoilt; and in this case the user does not only lose the Interest, he

[58] 'If the Creditor, without the Pledger's permission, takes work out of an unwilling Pledge,—he should be made to pay the price of such work; or else he forfeits the Interest'—(*Kātyāyana*).*

According to this text of *Kātyāyana*, the whole of the Interest is lost if an unwilling Pledge is used; but he loses only half the Interest in the case of the Pledge consisting of the slave and such articles (as laid down in the former text), [which is really *Manu* 8.150, but has been quoted by *Vāchaspati* as *Kātyāyana's*].—But if there is using of the *Pledge to be kept*, there is loss of the whole Interest (as laid down in Text 55 above).

Says *Nārada* (1.126)—

[59] 'If the Pledge is lost, the Principal becomes forfeited,—except where the loss has been due to an act of God or of the King.' †

Bṛhaspati (11.20) says—

[60] 'If the Pledge has been used and rendered worthless, by such use, the Principal becomes forfeited. If a very valuable Pledge is damaged, the Pledgee must render satisfaction to the Debtor.' ‡

This refers to case of loans without Interest.

Says *Vyāsa*—

[61] 'If the Pledge in the shape of Gold and the like is lost through the negligence of the Receiver, the Creditor should be made to pay its value, after having realised his own Principal with Interest accrued.' §

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has to make good the value of the article.—Others have explained these rules as applying to the case where the Pledge has not been redeemed even after the Principal has become doubled; and as the user's fault in this case is insignificant, he is to lose only half the Interest. But this view is not acceptable.

'*Half*' stands here not for the *exact half*, but for the amount that would be computed to be the monetary value of the use made by the Creditor. This rule applies to a case where the use is not forcible—(*Vīramitrodaya*, p. 307).

Vivādaratnākara (pp. 23-24) thus sums up the sense of *Manu*: (*a*) Where the Creditor uses the Pledge without permission, he forfeits half the Interest; (*b*) where, even though forbidden, he persists in using it by force, he forfeits the entire Interest;—(c) if he does not renounce the Interest, then he should satisfy the Pledgee by paying him the computed monetary value of the use made by him.

* This text (*Kātyāyana's*, No. 58) refers to cases where the Pledge is in the form of animate objects—Slaves, Bullocks, Horses, etc.—(*Aparārka*).

'*Unwilling*'—this applies to *Slaves* only.—'*Price*'—*wages* in the case of *Slaves* and *hire* in the case of *Bullocks*. This rule refers to Pledges given *to be kept*—(*Smṛtichandrikā*, p. 326).

'*Made to pay*'—by the King, to the Debtor.

† '*Act of God*'—such as Fire, Floods, Anarchy and so forth.—'*Act of the King*'—i.e. an action taken by the King, without anything wrong done by the Pledgee—(*Mitākṣarā* on 2.59).

'*Act of God*'—circumstances beyond human control—(*Smṛtichandrikā*).

‡ '*Rendered worthless*'—i.e. entirely incapable of being used.—'*Very valuable*'—i.e. whose value exceeds the amount to be recovered from the Pledger—(*Vivādaratnākara*, p. 25).

The loss to the Pledgee should be in proportion to the extent to which the Pledge has been rendered useless; and in the case of the 'very valuable' Pledge, the Creditor should deduct his own Principal and Interest from the value of the Pledge and pay the balance to the Debtor. This is what is meant by 'satisfaction'; which does not mean that he should be paid whatever he wants. This is made clear by *Manu* 8.144—(*Smṛtichandrikā*, p. 328; also *Vīramitrodaya*, p. 309).

§ If he does not pay the value, he loses his Principal—(*Vīramitrodaya*, p. 309).

Says *Bṛhaspati* (11.21)—

[62] 'If a Pledge be destroyed by an act of God or of the King, the Debtor shall deliver another Pledge, or repay the loan.'

And *Nārada* (1.130)—

[63] 'When a Pledge, though kept with care, loses its value in course of time, the Debtor shall either give another Pledge or repay the loan to the Creditor.'

And *Viṣṇu* (5.181-182)—

[64] 'If one has pledged more than a "bull's hide" of land to one person,—and without having redeemed it from him, pledges the same to another,—he should suffer corporeal punishment. If the area of the land be less, he should be made to pay a fine of 16 *Suvarṇas*.'

What this means is that the later Pledge-transaction is not valid.—Such is the opinion also of *Pārijāta*, *Ratnākara*, *Smṛtisāra* and others.

From this it is to be understood that there would be no objection to the owner selling the plot of land in question.

Says *Viṣṇu* (5.183)—

[65] 'That plot of land,—more or less,—the product of which would maintain one man for one year, is called *Bull's Hide*.'

Again [*Viṣṇu*]—

[66] 'If the same article has been pledged to two persons, and there is a dispute between these, the victory should lie with the man who has had use (possession) of it without force.—In case the possession (use) of it also by the two men has been of equal duration,—it should be equally divided between the two. Such is the law in regard to gifts and sales.'

This is a rare case; and in such cases where there is equal evidence on both sides, the decision should be arrived at by means of 'Supernatural Methods' (Ordeals).

Says *Kātyāyana*—

[67] 'If, without any fault of the Creditor, the Pledge should sink in value or perish, the Debtor should be made to deliver another Pledge; the Debtor does not become absolved from the debt.' *

For the idea that,—'in the event of a pledged bullock or the like dying by chance while pledged, the Pledgee forfeits his Principal',—the only authority consists in undisputed custom.

Again [*Kātyāyana*]—

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* What is meant is that—if, without any fault of the Creditor, the pledged article becomes useless,—the Debtor should produce another Pledge equal to it; and he does not become absolved from the debt without paying it.—As regards the view held by some people that—'in the event of the pledged Bullock and such things perishing by chance, the Creditor forfeits his Principal and the Debtor loses his property in the form of the pledged article (the account between them becoming thus squared)',—the only authority for this could be an undisputed custom to the effect; but if such a custom does exist anywhere, it should be taken as referring to Pledges *to be used*—(*Vivādaratnākara*, p. 26).

[68] 'In a case where the Pledger * (or his heirs) is lost (* and the Principal has become doubled), the Creditor shall surrender the Pledge to the King; thereafter, it shall be notified and sold,—such is the law. Out of the sale-proceeds, the Creditor shall receive his Principal with Interest and surrender the balance to the King.' †

Says *Bṛhaspati*—

[69] 'When a house or plot of land has been pledged *for use*,—if the period fixed for such use has not expired,—the Debtor cannot recover his property, nor the Creditor his loan.'

'*Bhogē*'—for use.—'*Na prakarṣānvitam*'—the stipulated period of use has not expired.

[70] 'After the stipulated period has elapsed, the ownership of both over both becomes established. But even before the expiry of the stipulated period, they can come to an arrangement with mutual consent.'

'*Prakarṣa*'—Stipulated time-limit.‡
Says *Manu* (8.143)—

[71] 'There shall be neither transference nor sale of the Pledge (by the Pledgee) merely by the lapse of time.'

'*Kālasamrodhaḥ*'—the Pledge being retained for a long time.— '*Nisarga*' is the transference of the Pledge to a third party, on mortgage for a larger amount. *Halāyudha*, however, takes it as 'giving away'.—The whole sentence should read as—'Transference and sale should not be done by the Creditor'. Others, however, have explained the sentence as follows: 'As the Creditor has not yet acquired any proprietary right over the pledged article, there can be no possibility of his *transferring* and *selling* it; and it cannot be right to forbid what is not possible; consequently, the words should be taken to mean that "on account of the *samrodha*—i.e. stipulation fixing the time-limit, —during that time, the *Debtor* cannot be forced to dispose of the article concerned; hence he should not effect the *transference*—giving away—and *sale* of the Pledge to a third party ".'

As regards the rule that—'if one pledges an article and then sells it, it is the sale-transaction that supervenes', this must be taken as referring to cases where there is no stipulation regarding the time-limit.

As regards another rule, that—'there can be no giving away or sale of the Pledge that has not been redeemed',—there is no authority for it.

The *Kalpataru* says that this text of *Manu* applies to the Pledge *for use*. —But this is a sweeping assertion; because what is stated is possible also in

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* 'Or his heirs' has been added by *Vivādaratnākara* (p. 34); so also the words—'and the Principal, etc. etc.'.

† The balance is to be surrendered to the King only when no relative of the Debtor can be found; if any such can be found, it should be given to him—(*Aparārka*, p. 658 and *Vīramitrodaya*, p. 311).

‡ According to an explanation given in *Mitākṣarā* (or *Yājña*. 2.64), the term '*prakarṣa*' in this context (which has been rendered as *stipulated time-limit*, according to *Vivādachintāmaṇi* and also *Vivādaratnākara*, p. 33) is to be taken as meaning *excess*; and the rule would, in that case, mean that—'When the profit derived from the Pledge has *exceeded the amount of Interest*, the Creditor is not entitled to receive the Principal, and the Debtor should receive back the Pledge without any payment; if, however, the Interest has not been *exceeded*, and the Pledge is not enough to yield the amount of Interest,—then the Debtor cannot receive the Pledge even on paying the Principal; but by mutual consent, the Creditor may restore the Pledge even on the payment of the *Principal only*'.

such cases of Pledge *for keeping*, in which no time-limit has been stipulated; —the grounds for it being equally present in both cases.*

PART (F)—ON SURETY

Says *Bṛhaspati* (11.39)—

[72] 'The *Surety* is of four *kinds*—(*a*) for Appearance, (*b*) for Trust, (*c*) for Payment of debt, and (*d*) for Restoring the article,—recognised by the learned as sanctioned by law.'

'*Ṛṇē*' is to be construed with '*dānē*' [so that the two together stand for *Payment of Debt*].—'*Arpaṇa*', 'Restoring', here appertains to what has been borrowed for use; that is, when some one has borrowed an article on request, another man says—'If this man does not bring back the thing and restore it to you, I shall return it to you', there is only *restoring* of the article, not *giving* of it. In the case of the debt however, there is actual *giving* by both (the Debtor as well as the Surety). This is the difference between the two kinds of Surety (*third* and *fourth*).—The traditional reading, however, is '*ṛṇidravyārpaṇē*', which means 'for delivering the assets of the Debtor' to the Creditor.†

Bṛhaspati continues (11.40)—

[73] 'The first says *I shall produce the man*; the second says *He is good* (*reliable*); the third says *I shall pay the debt*; the fourth says *I shall deliver his assets.*'

[74] 'In the event of their failure (to produce the Debtor, and to prove his *goodness*), the first two Sureties should be made to pay the sum lent, at the appointed time; and in the event of their not-agreeing (to pay the debt or to deliver the assets), the last two Sureties should be made to pay; and in the absence of these latter Sureties themselves, their sons also shall be made to pay.'

The 'Surety' in connection with law-suits, ordeals and the like is included among the 'Surety-for Appearance' and the rest that are mentioned by *Kātyāyana*. Hence the number is *four* only. As says *Kātyāyana*—

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* The meaning is that the Pledge should not be handed over to another person simply because it has remained with the Pledgee for a long time. He should continue to use and derive profit from it, till the Principal has become doubled and repaid, when it shall be redeemed. When the doubled Principal has been paid, the Pledge *to be used* shall cease to be *used*, and the Pledge *to be kept* shall be restored to the Pledger—(*Medhātithi*).

'*Transference*' is pledging to a third party.—This rule refers to both kinds of Pledge,—*to be used* and *to be kept*.—That the 'transference or sale' prohibited here is that by the *Pledgee* has been held rightly by the *Kalpataru*, the *Pārijāta* and the *Mitākṣarā*.—This rule applies to cases where no time-limit has been stipulated, while *Yājñavalkya* 2.58—that 'the Pledge becomes forfeited if it is not redeemed on the Principal becoming doubled'—refers to those cases where a definite time-limit has been stipulated; hence there is no inconsistency between *Manu* and *Yājñavalkya*—(*Vivādaratnākara*, pp. 31-32).

† The reading adopted by *Vāchaspati* is '*ṛṇē dravyārpaṇē*' in place of the generally-accepted ('traditional' as he calls it) reading '*ṛṇi-dravyārpaṇē*'. As explained in the text, he takes the *third* kind of Surety to be one who vouches for the return of articles lent for use, such as ornaments for a festivity—(Jolly).

Vivādaratnākara (p. 40), however, adopts the 'traditional reading' and explains it as 'delivering to the Creditor the property of the Debtor'.

[75] 'The man who has stood Surety (1) for Payment, (2) for Appearance, (3) for Trust, (4) for Suits and Ordeals,—should be made to pay the due in the above order,—in case the Debtor fails to pay.'

What is meant (by Text 74) is that if the *Surety for Trust* has declared a man to be 'reliable' who is not found to be reliable,—and if the *Surety for Appearance* fails to produce the man,—he should be made to pay the amount involved *; not the sons of these Sureties.

As says *Yājñavalkya* (2.54)—

[76] 'If the *Surety for Appearance*, or the *Surety for Trust*, has died,—his sons need not pay the debt. But the sons should pay, if the Surety were *for Payment*.'

That is to say, in the case of the man who had stood Surety for (*c*) *payment* and for (*d*) *deliverance of assets*,—his sons should pay the debt.

The *Surety for Appearance* should be made to pay only on the expiry of the stipulated time for appearance,—except when the non-appearance is due to an act of God or of the King. After the time-limit has expired (without the Debtor being produced) by reason of some act of God or of the King,—when the obstacle due to such act has ceased, if the Surety fails to produce the Debtor, through negligence, or the Debtor dies,—he should be made to pay. As declared by *Kātyāyana*—

[77] 'If the *Surety for Appearance* fails to produce the Debtor at the stipulated place and time, he should pay the dues to the Creditor; except when the failure is due to an act of God or of the King.—If, on the lapse of time,† the Surety fails to produce the Debtor, he should be made to pay the dues; so also if the Debtor dies; such is the declared law.'

Even if the Debtor dies after the lapse of the time granted to the *Surety for Appearance* for producing the Debtor, that Surety has to pay the debt of the man whom he has failed to produce.

Similarly if the *Surety for Appearance* agreed to become the Surety on having received a Pledge, then his son also should be made to pay. As declared in the following text—

[78] 'If a man had stood *Surety for Appearance* after having taken a Pledge, then on this fact being proved, his son should be made to pay the debt '—(*Kātyāyana*). ‡

What is payable by the son in this case is the Principal only, without Interest; as declared by *Vyāsa*—

[79] (*a*) 'The son's son should pay, without Interest, his grandfather's debt;—(*b*) the son should pay, without Interest, the Surety-money due

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* This is the correct explanation of *Bṛhaspati* text (No. 74 above); and the same is found in *Vivādaratnākara* (p. 40). The translation of the text as given by Jolly (Sacred Books of the East, p. 327) is apparently wrong. Under this latter the distinction between '*vitathē*' and '*visamvādē*' is not brought out.

† *Vivādaratnākara* (p. 42) agrees with the *Chintāmaṇi* in taking this '*kālē*', 'time', to mean 'when the obstacle due to the act of God or King has ceased'. *Vīramitrodaya* (p. 323) takes it as 'the time allowed to the Surety for finding the Debtor'. According to the former explanation '*lapse of time*' (in the translation) would mean 'lapse of the delay caused by the obstacle due to the act of God or King'.

‡ According to *Smṛtichandrikā*, p. 533, this applies to the case of the *Surety for Trust* also.

from his father;—(c) but the sons of these two should not be made to pay these;—such is the settled rule.' *

In regard to a case where there are several sureties, *Yājñavalkya* (2.55) says—

[80] 'If there are several sureties jointly bound, they should pay the debt due, in proportion to their shares; but when they are all equally bound severally, any one of them may have to pay the whole, according to the wish of the Creditor.'

'*Ēkachchhāyā, etc. etc.*'—In a case where at the time of the transaction, the Creditor makes the stipulation—'The dues shall be realised, at my pleasure, from any one of the Sureties, and I shall not try to bring you together (bind you jointly)',—then any one of the several Sureties shall pay the entire dues. '*Ēkachchhāyā*' means that each one is equally bound.†

The Surety is to give time for seeking out the wanted Debtor; as says *Bṛhaspati* (11.42-43)—

[81] 'The Creditor shall allow the Surety time for seeking out the absconding Debtor,—a fortnight, a month, or a month and a half,—according to the distance of the place.—Sureties should not be excessively harassed; they should be made to pay the debt by easy instalments.—When the Surety, who had been made to stand Surety, has, on being harassed, paid the Surety-money,—the Debtor shall pay him twice as much, after the lapse of a month and a half.' ‡

This is easily understood.

Similarly, if the Surety has had to undergo other expenses on behalf of the Debtor, the latter has to pay those also; as says *Kātyāyana*—

[82] 'Whatever the Surety, harassed by the Creditor, has had to pay on behalf of a certain Debtor,—he should recover it from him,—if the said payment is proved by witnesses.' §

The acceptance of the Surety leads to the success of the Creditor's suit; which implies that the Surety has the capacity to meet the demand, if necessary. As says *Kātyāyana*—

[83] 'In regard to any transaction, one should not accept as Surety any person who is unable to pay the amount due to the Creditor and also an equal amount as fine to the King, and who is not well known.'

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* (*a*) The son's son is to pay all his grandfather's debts, with the exception of the Surety-money—says *Vīramitrodaya* (p. 325).

'*Samam*' is *without Interest.* In both (*a*) and (*b*) the payment is to be *without Interest*; but (*a*) is not to be paid at all, by the son of the son's son,—and (*b*) is not payable at all by the son's son—(*Vivādaratnākara*, p. 44).

† When each of them has agreed to pay the whole, any one of them may be called upon to pay the whole due;—when they have guaranteed to pay, each according to a stipulated share, then the amount paid by them shall be proportionate to the shares previously agreed upon—(*Vyavahāra-mangūkha*).

The same rule applies to *sureties for appearance* and *for trust*—says the *Mitākṣarā*.

If the Creditor does not express any wish as to which one Surety shall pay, then all of them shall pay in equal shares—(*Smṛtichandrikā*, p. 356).

‡ *Vivādaratnākara* (p. 45) has the following notes—'*Naṣṭa*' is the *absconding* Debtor.—'*Pratibhāvitaḥ*'—who had been made to stand surety.

§ This sum is to be recovered without Interest, if it is paid within a month and a half; after that, he receives double—(*Vivādaratnākara*, p. 46).

Whether the man is so able or not should be ascertained from the people themselves.

PART (G)—THE MANNER OF REPAYING DEBTS

Says *Bṛhaspati* (11.47)—

[84] 'A loan shall be repaid on demand, if no time has been stipulated,*—or on the expiry of the stipulated time-limit,—or when interest has ceased. If the Debtor is not alive, it shall be paid by his sons.'

What is meant is that—(*a*) in a case where the pleasure of the Creditor has been agreed to by both parties as indicating the time-limit, the debt should be repaid as soon as it is demanded;—(*b*) in a case where another time-limit has been fixed, it should be repaid on the expiry of that time-limit;—(*c*) where no sort of time-limit has been fixed, there it should be repaid when the Interest has reached its maximum.

[Says *Nārada* 4.2]—

[85] 'On the death of the father, the sons—divided or undivided—shall repay his debt, in proportion to their shares; or it may be paid by one who has taken up the burden of management.' †

Says *Yājñavalkya* (2.50)—

[86] 'If the father is dead, or gone abroad, or smitten with trouble, the debt should be paid by his sons and grandsons,—if, on denial, it is proved by witnesses.' ‡

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* The reading adopted is '*aprakāla*' as in the MSS., and in *Vivādaratnākara* (p. 47).—The *Smṛtichandrikā* (p. 377), however, reads '*alpakāla*', and explains it to mean 'debt contracted for a short time'. It adds that the points of time here indicated are only to be those where payment *must be* made; it is not meant to preclude earlier payment.

† If the sons are undivided and are living together on equal terms, the payment shall be made by them collectively;—(*b*) if they are living together, under the arrangement that one of them is the 'Head' of the family, then the payment shall be made by this Head;—(*c*) if they are divided, the debt shall be paid in proportion to their shares in the Father's property—(*Smṛtichandrikā*, p. 375 and *Vīramitrodaya*, p. 341).

Asahāya explains thus—If the debt contracted by the father has not been repaid during his lifetime, by himself, it must be repaid, after his death, by his sons. Should the sons separate, they shall repay it according to their respective shares. If they remain united, they shall pay it in common, or the Manager of the Property shall pay for all,—such Manager being either the seniormost member or a younger member who,—during the absence of the eldest, or on account of his incapacity,—has taken up the management of the family-estate.

‡ '*Smitten with trouble*'—such as drunkenness and the like.—If the sons and grandsons dispute the validity of the debt, it has to be paid after it has been established by evidence adduced.—The implication of this rule is that the liability of the sons and grandsons does not cease even when the father has left no property—(*Aparārka*).

The sons and grandsons have to pay even though they may not have inherited any property from the father. The order of the liability is that in the absence of the father, the son has to pay,—and in the absence of the son, the grandson has to pay—(*Mitākṣarā*).

(*a*) If the Debtor has died, his sons shall pay the debt,—or his heirs who have inherited his property,—or those conjointly with whom the debt had been contracted,—or those who had stood surety; (*b*) sons or grandsons or other heirs inheriting the dead man's property shall pay all his debts, whenever and wherever contracted—(*Arthashāstra* 3.11).

In reference to the case where the Debtor has 'gone abroad', *Nārada* has a special rule—

[87] 'If the father or uncle or elder brother has gone abroad, the son (or nephew or the younger brother) is not bound to pay the debt (contracted by him) before the lapse of twenty years.'

Thus in *Viṣṇu's* text—the term 'twice ten years' has to be construed with 'if he is abroad'; it cannot be construed with anything else; as it would be wholly incompatible; as is clear from what *Viṣṇu* himself says in the following text—

[88] 'If the person who contracted the debt is dead, or become a Wandering Mendicant; or if he has remained abroad for twenty years,—that debt shall be paid by his sons and grandsons; not by remoter descendants, if they do not wish to pay'—(6.27-28);—

which means that the great-grandson need not pay it, if he does not wish to do so.*

[Says *Yājñavalkya* 2.90]—

[89] 'A debt covered by a written bond should be paid by descendants up to the third generation. The Pledge is enjoyed until this debt has been paid up.' †

What is meant (by Text 87 above)—as agreed upon by *Ratnākara* and others—is that—'If the debt has been contracted by the father, or uncle, or the elder brother,—who have not become separated (who were members of the joint family),—and it is found to be legally valid, it should be paid, after twenty years, by the son (or nephew or younger brother respectively),—if the contractor of the debt remains abroad.

The view of the author of *Smṛtisāra*, however, is as follows:—If the separated father or others have contracted the debt for their own sake,—and they remain abroad,—the Son or others should pay it; and the restriction of time (*after twenty years*) is meant for this case. It cannot be meant for the case where the debt has been contracted by the father or others who are *not separated*, for the benefit of the family, etc.; because in such cases, the son, nephew and others are as much *debtors* as the father, etc., as they are all under the same roof (and hence equally bound). It is only in this way that the declaration ('after twenty years') is saved from being meant for purely supernatural purposes. Thus then the said declaration should be taken as laying down the time ('after twenty years') in regard to that case where the repayment (by the son and others) is under compulsion, without the person called upon to repay having had anything to do with the contracting of the debt (or benefiting by it). So that the debt that had been contracted for the sake of the joint family, has to be paid even before the lapse of twenty years.—That this is the right view is shown by the following text of *Yājñavalkya* (2.45)—

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* '*Twenty years*' is to be construed only with 'remained abroad', not with the other terms.—The sense is that the fourth and lower descendants need not pay. The qualifying term 'if they do not wish' implies that 'if they are desirous' of the spiritual well-being of their great-grandfather and other remoter ancestors, they should pay the debt contracted by them—(*Vivādaratnākara*, p. 50).

† The statement that 'the liability to pay the debts ceases after the grandson' refers to cases not covered by a Pledge, in the shape of lands, etc., given by the ancestor. If the debt was taken after having given a *Pledge for use*, it has to be paid by the remoter descendants also—(*Vivādaratnākara*, p. 49).

[90] 'When the debt has been contracted by members of the joint family, for the benefit of the family, it should [be paid by the Head of the family and], on his death or remaining abroad, be paid by those who inherit his property.'

It cannot (continues the *Smṛtisāra*) be urged that in this case (mentioned by *Yājñavalkya*) also, they should wait for twenty years. Because there is no authority for this. So that the declaration of the period of time must be taken as referring to the case where the contractor of the debt has been a separated member of the family.—Such is the opinion of the *Smṛtisāra*.

In what cases, even when the contractor of the debt is alive, the debt is to be paid (by others), and where there should be no waiting for the lapse of time,—has been thus pointed out by *Bṛhaspati*—

[91] 'Even when the father is present, if he happen to be blind from birth, or deaf, or insane, or suffering from consumption, leucoderma and such other (incurable) * diseases,—his debt, when proved, should be paid by his sons.'

If the father has no property and hence is unable to repay the debt,—if the son,—or, in his absence, the grandson,—is able to repay, he should repay the debt, if valid;—even though he may have been separated from the father.—Such is the view of the *Pārijāta*.†

[Says *Nārada* or *Kātyāyana*]—

[92] 'If a debt has been contracted by several persons jointly,—each one of them is liable, during his lifetime, to pay the debt due from others also; when they are dead however, their sons are not liable to pay the debt of others (save that due from each one's own father).'

That is, from among persons under the same bondage, the one who is living is to pay the debt.‡—Says another text (No. 80 above)—'When they are equally bound, any one of them may have to pay the whole, according to the wish of the Creditor.'

Again [says *Kātyāyana*]—

[93] 'If the debt has been contracted by the father conjointly with others,—it shall be paid in its entirety by the son, if the father remains abroad; if the father is dead, however, the son shall pay only his father's share of the debt, not the debt of others.'

As the son is liable to pay also such debts of his father as do not fall under this category (of having been jointly contracted),—all that is meant by this declaration is that the son shall not wait for the lapse of 'twenty years' (as contemplated in texts Nos. 87 and 88). The sense of the present Text (93) is that—'on the death of the father, the son shall pay only his own

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* This is the explanation by *Pārijāta* quoted by *Vivādaratnākara*, p. 51.

† *Vivādaratnākara* (p. 51) quotes *Pārijāta* as explaining the rule to mean that 'If the father is absolutely unable to repay, then the son should repay the debt'. It goes on to state its own view—In reality, however, what is meant is as follows:—(*a*) If the father is suffering from any such disqualifications as render him unable to possess property,—and if the son has not had his property partitioned,—then the son shall pay his debts;—(*b*) but if the father, even though suffering from the disabilities, still happens to have some personal property of his own, then the debt has to be repaid by himself;—(*c*) if the father is absolutely unable to pay,—and if the son is able to pay,—the debt shall be paid by the son.

‡ But when all the contractors are dead, their sons are to pay it proportionately to the individual shares,—adds *Vivādaratnākara* (p. 51).

share of the debt,—even though it may have been contracted jointly with others.'

Says *Kātyāyana*—

[94] 'What has been promised for a religious purpose by a man, whether in comfort or in distress, must be paid. If he dies without paying it, his son should be made to pay it; there can be no doubt on the point.'

In regard to *Minors*, a special rule is laid down by *Nārada*—

[95] 'A minor, even though his own master, is not liable to pay any debts.'

And *Kātyāyana*—

[96] 'On the death of the father, his minor sons shall not be liable to pay his debt; but in due course of time, they should pay it in the proper way *; otherwise, they would dwell in hell. Up to the eighth year of age, the child should be regarded as still in the womb; up to the sixteenth year he should be treated as a 'minor', also called '*Poganda*', Boy; above that age, he becomes a *major*, competent to deal with business and his own master, except for the control of his parents.' †

Says *Kātyāyana*—

[97] 'That which has been proved, that of which part has been repaid,—such debt of one's grandfather one should pay; but that which is invalid, or has been repudiated by one's father, shall never be paid.'

'*Dṛṣṭam*'—proved, valid.—'*Sadoṣam*'—invalid, e.g. debts due to wine, gambling and the like.—'*Pitrā vyāhatam*'—repudiated, disputed, by the father. The 'dispute' or 'repudiation' meant here is one based on some special grounds, not mere ordinary denial. If it were not so, then the freedom from liability would be too wide.

Gautama (12.41) lays down the following exception to the son's liability to pay the father's debts—

[98] 'Surety-money, commercial debt, fee (bridal), debt contracted for wine or in gambling, and fines,—these shall not involve the sons.'

'*Surety-money*'—money due on account of standing surety *for appearance* and *for trust*.‡—Similarly 'commercial debt' stands for those goods that

* The text has been so explained in all Digests; and the right reading as found in them and also in Ma and Mb is '*Nāprāpta, etc., etc.*'. What is meant, says *Vivādaratnākara* (p. 54), is that—'When the father dies, his minor sons shall not be liable to pay his debts, during their minority; they shall, however, pay it as soon as they attain majority.—'*In the proper way*'—i.e. proportionately to their respective shares, or in accordance with the property inherited—says *Vivādaratnākara*.

† This same definition of 'major' and 'minor' is attributed to *Nārada* in *Mitākṣarā* on *Yājña.* 2.50.

‡ Taking into account the parallel passages of *Manu* (8.159-160) and *Yājñavalkya* (2.47 and 54), *Haradatta* very properly restricts this rule to a bail for the personal appearance of the offender.—In explanation of the expression 'commercial debt', he gives the following instance:—If a person has borrowed money from somebody on the condition that he is to repay the Principal together with Interest, and if he dies in a foreign country, while travelling in order to trade, then that money shall not be repaid by the son.—The instance explaining the term 'Fee' is as follows:—If a person has promised a fee to the parents of a girl and dies after the wedding, then that fee does not involve his son; i.e. need not be paid by him.—The word '*Shulka*' in the original is, however, ambiguous; it may also mean 'tax or toll'—*Buhler* on *Gautama.*

have become due from the father on account of commercial transactions.—These '*shall not involve the sons*'; that is, they shall not be payable by the sons.

Says *Bṛhaspati* (11.51)—

[99] 'Debts due to Wines, Gambling, Futile Gifts, Gifts promised through lust or anger, Surety-money, Balance of Fines and Taxes,—these debts of the father the sons shall not be made to pay.' *

'*Sauram*' is debt due to *surā*, wine.—'*Daṇḍa, etc.*'—i.e. Fines and Taxes, and the balance of these.†

So also *Vyāsa*—

[100] 'Fine or Balance of Fine, Tax or Balance of Tax, and what is not lawful,—such debts of the father, the son should not pay.'

'*Na vyāvahārikam*' means what is outside the pale of custom or law (what is not admissible in law).‡

'Gift promised through Love and Anger' is thus defined by *Kātyāyana*—

[101] 'The gift that has been promised, either with or without a written bond, to woman already married to another man, should be known as debt contracted *through lust*.—In a case where, having caused hurt to a person, or destroyed his property, through rage,—if a man has promised to pay for his satisfaction,—that should be regarded as debt contracted *through anger*.' §

Thus there is no undue indefiniteness in the matter.

'Futile gift' also (mentioned in Text No. 99) should be understood to be one that has been 'promised' (not actually given); otherwise, as it would have been already given, there could be no point in prohibiting its payment.

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* '*Gifts promised through lust*'—i.e. in adulterous love-making. '*Gifts promised in anger*'—e.g. in a fit of anger, a man damages the property of another man and then in order to placate him, promises a present—(*Aparārka*, p. 649).—'*Shulka*' has been taken by *Haradatta* (see above) 'as fee for the bride'; the *Bālambhaṭṭī* explains it as standing for *taxes*.

† The *Mitākṣarā* (on *Yājña.* 247) says—The mention of '*balance of fines and taxes*' should not be taken to mean that if the *entire* fine or tax is due, the son shall have to pay it; as this also is precluded by other texts (e.g. the following Text 100 from *Vyāsa*).—'*Gifts promised in love or anger*'—as described in Text No. 101 below.

‡ 'What is not proper'—according to *Aparārka*, p. 648.—*Smṛtichandrikā* and *Vīramitrodaya* explain it as 'due to wine';—*Bālambhaṭṭī* as 'what was not used for the family'.—Kane notes—The Bombay High Court (I.L.R. 32 Bombay 348) has accepted the meaning to be 'what no decent person or responsible man would incur'; Allahabad (33 All. 472), Madras (37 Mad. 48) and Calcutta (39 Cal. 862) have dissented from the above; Calcutta explaining it as 'what is not lawful, usual or customary, or which is for a cause repugnant to good morals'.

Vivādaratnākara (p. 58) says—The mention of 'Fine' itself implies the 'balance of Fine' also; and yet the Text adds this latter; which implies that, if the Fine is a very heavy one, it should be paid by the son; but if there is only a small balance left unpaid, that need not be paid. This also implies that if the Fine is a small one, the whole of it need not be paid by the son.

§ *Vivādaratnākara* (p. 58) has the following notes on this Text:—'*Uktam*'—promised.—'*Likhitvā*'—with a written bond;—'*muktakam*'—without a written bond.—'*Parapūrva, etc.*'—having promised a gift to another man's wife, and being unable to pay it, the man borrows the required money and pays it; this is the debt that is said to be 'contracted through lust'.—The term '*parapūrva*', 'already married woman', here stands for all such women as are not married to the man himself.—Similarly, when one hurts a man, or destroys his property, and then for rendering full satisfaction to him, borrows money,—this is 'debt contracted through anger'.

'*Surety-money*' is money due from the Surety *for trust* and the Surety *for appearance.*

In certain cases, even the father's debt need not be paid by the son; as says *Nārada*—

[102] 'Among—(*a*) the person taking the property, (*b*) the person taking the wife, and (c) the sons,—it is the person taking the property who should pay the dead man's debts; if there is no one taking his property, nor one taking his wife,—then the son shall pay his debts; if there is no one taking his property, nor a son,—then the person taking his wife shall pay his debts.'

The meaning of the Text is as follows:—Even if the son is entitled to inherit the property, if he happen to be beset with difficulties (disqualifications),—the man who takes his property should be made to pay his debts.—In the word '*strīdhaninoḥ*', the possessive affix '*ini*' is added to the compounded word '*strīdhana*'. Hence the meaning is that—if the person taking the wife and the person taking the property are non-existent, the debt is to be paid by the son even though he be beset with difficulties (disqualifications).—If the person taking the property and capable son are non-existent, the debt should be paid by the person taking his wife.—Hence the two (the son and the person taking the wife) are not to pay if the person taking the property is there.—But if the son is incompetent (disqualified), and the person taking the property is non-existent, the person taking the wife should pay the debt.*

On this same subject, says *Bṛhaspati* also—

[103] 'If the son is beset with difficulties (disqualifications), the man who takes the property of the dead man pays his debts. If there is no one taking the property, the man who takes his wife pays the debt.' †

So also *Kātyāyana*—

[104] 'The son should be made to pay the father's debts, if he be free from difficulties (and disqualifications), entitled to inherit property and fit to bear the burden; otherwise, the son should not be made to pay it.—If the son is found to be beset with difficulties or a minor, the man who takes the dead man's property should pay his debts; and in the absence of such a man, the man who takes his widow.' ‡

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* '*If the person taking the property is non-existent*',—because the man has left no property; similarly '*if the man taking his wife is non-existent*',—because he has left no wife. Under such circumstances, the debt is to be paid by the son who may be without property and without parents—so says *Asahāya*.—According to *Aparārka*, (*a*) the son and other inheritors of the man's property shall pay his debts; (*b*) in the absence of these, it will be paid by the man who keeps his wife; and (*c*) in the absence of even such a man, it should be paid by the disqualified son who has been excluded from inheritance.

Throughout this context, the expression '*person taking his wife*' stands for the man who has received as his wife, the widow—who is still a virgin,—or who, in dire distress, has offered herself to the man—(*Mitākṣarā* on *Yājña.* 2.51).

† *Vivādaratnākara* (p. 64) says that in the absence of these two persons, the debt has to be paid by the son even though he be beset with difficulties and disqualifications.

‡ '*Entitled to inherit*'—i.e. free from such disqualifications as Congenital Blindness and the rest.—'*Bear the burden*'—to pay the debt—(*Vivādaratnākara*, p. 64).

In the absence of both these persons (one taking the property and the other taking the widow), the debt has to be paid by the son;—as declared by *Yājñavalkya* (2.51)—

[105] '(A) One who takes the dead man's property should be made to pay his debts; (B) as also the man who has taken his wife; (C) that son is to pay the father's debts whose property does not rest with another person; (D) if the man has left no son, his debts shall be paid by those who inherit his property.'

From all this it follows that even when the son is quite competent, he should be made to pay the debt only if his property does not rest with another person; which means that from among the several sons of the dead man, that son alone should pay the debt who has been installed in the father's place,—not any other son.—The upshot of all this is as follows—(*a*) Even when *the person taking the property* and *the person taking the wife* are there, the debt is to be paid by the son who is possessed of property and capable of bearing the burden;—(*b*) if there is no such son, it will be paid by the man taking the dead man's property;—(*c*) in the absence of the man taking his property, as before, even if the son is there, the debt will be paid by the man taking the widow;—(*d*) when both of these (the man taking the property and the man taking the widow) are not there, the family debt shall be payable by the son, even though he may be 'incompetent'.* If, among the sons, any *one* is installed in the place of the father, then he alone should pay.

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* There has been some difference of opinion on the exact meaning of this rule laid down by *Yājñavalkya* (2.51).—According to *Aparārka*, there are three distinct rules laid down here—(1) The man inheriting the dead man's property should pay his debts;—such 'inheritors' being the son, the secondary son, the wife, the daughter and so forth; but the liability of the primary son having been already asserted in 2.50, the 'inheritors' here intended must be the secondary son and the rest. (2) If there is no one who has inherited the dead man's property, then the man who has taken his widow should pay the dead man's debts. (3) The liability of *sons* having been declared under 2.50 in a general way, the *third* rule here laid down makes a distinction between two sets of sons; there is the son in the normal condition who naturally inherits the father's property; then, in certain cases, there is also a son who, by reason of congenital idiocy, blindness or such other disqualifications, has been excluded from inheritance, and therefore has no property of his own; the meaning of the third rule is that 'among sons, the liability lies with that son who has property of his own and whose inheritance does not (like that of the disqualified son) rest with his brothers. (4) The liability of grandsons to pay the grandfather's debts having been asserted in 2.50, people might be led to think that the grandson is to pay even when the sons are there; in order to preclude this idea, the *fourth* rule is laid down that—'it is only when there is no son, that the other inheritors of property are liable to pay the debt'.—Of rule (3), *Aparārka* supplies another explanation, by which the meaning is that—'that son who (being among those secondary sons who are not entitled to inheritance) has not inherited the father's property shall pay the debt; but this is so only when no 'taker of wife' or 'inheritor of property' is there.

According to *Mitākṣarā* also, the meaning is that—(1) The inheritor of property should pay;—(2) if there is no such inheritor, the man who has taken the wife should pay;—(3) if there is no such man, then the son 'whose paternal property does not go to another',—i.e. one who, if there were any paternal property, would not be debarred from inheriting it by reason of congenital disqualifications. According to this, all these three form parts of one rule, laying down the order of the liability.—(4) The last rule—'If the man has died leaving no son, etc.'—means that, if the man has left no son or grandson, the great-grandson and the rest shall be liable to pay his debts; only if they have inherited his property, not otherwise. The case of the great-grandson and others thus differing from that of the son and the grandson who are liable even though they may have inherited nothing from the dead man.

Like the son, other persons also may be liable for the debt; as declared by *Nārada*—

[106] 'If a debt had been contracted for the purposes of the family, by an unseparated uncle or (unseparated) brother, or by the mother,—it shall be payable by all those who inherit the property.'

Says *Manu* (8.167)—

[107] 'Should even a dependant effect a transaction for the purposes of the family, the master—whether in his own country or abroad,—shall not repudiate it.' *

Bṛhaspati (11.50)—

[107A] 'When a debt has been incurred for the purposes of the family, by an uncle, brother, son, wife, slave, pupil or dependant,—it should be paid by the Head of the family.'

Inasmuch as the debt contracted by the slave and such people also are payable, such debt, incurred for the purposes of the family, should be paid by the man who has inherited the property (of the dead man); in accordance with the declaration (under Text 90 above) that—'when debts have been contracted by members of a joint family, for the purposes of the family, they should be paid by the Head of the family; and, upon his death or on his going abroad, by those who inherit his property'—(*Yājñavalkya* 2.45).

Certain debts incurred by the son also are payable by the father—

[108] 'A debt contracted by the son shall be paid by the father only when it has been approved by him; or he may pay it out of his love for his son; he is not liable otherwise'—(*Nārada*).

Says *Viṣṇu* (6.31-32)—

[109] 'The woman shall not pay the debt contracted by her husband or her son; the husband and the son shall not pay the debt contracted by the woman.'

And *Nārada*—

[110] 'A debt contracted by the wife shall not involve the husband, except when it has been contracted in times of distress; because the needs of the family are unavoidable.—This non-liability of the husband does not apply in the case of debts incurred by the wives of washermen, hunters, herdsmen and liquor-distillers; because the livelihood of these men is dependent upon their wives, and the family is dependent upon these.'

Vishwarūpa takes the third sentence regarding the *son* to refer to the case where, from among several sons, one is permitted by the others to take all the property that the father has left; and in this case the debt has to be paid by that one son, not by the others.

Vivādaratnākara (p. 63) takes the third rule to apply to cases where the dead man has left no property; in which case the debt falls upon such of his sons as *would have inherited his property if any*,—and not those who would not be so entitled; the reason that is given for restricting the rule to such cases is that the case of the man who has left some property is already covered by the first rule that the debt is to be paid by the person who inherits his property.

* During the master's absence, whatever the servant does for the maintenance of the family, must be held to be valid—(*Medhātithi*).

'Dependant'—slave and the like—(*Vivādaratnākara*, p. 55).

Similarly also in cases where the woman is the predominant factor in the family; and no significance is to be attached to the particular castes mentioned here. Because in all such cases, it is the woman who manages everything; and the man is ignorant of the whole business. All this, therefore, is a mere matter of detail; because, in reality, if a debt has been incurred *for the purposes of the family*,—even by the wife of the *Brāhmaṇa* and others (not named in the text),—it shall be paid by the Head of the family.

In other cases, the debt that is payable by the wife is thus declared by *Yājñavalkya* (2.49)—

[111] 'The wife shall pay the debt contracted by the husband, if she has accepted * the liability; as also that contracted by her jointly with her husband.'

Kātyāyana says—

[112] '[The woman shall pay the debt] contracted conjointly with her husband or her son, and also that contracted by herself.'

And *Nārada*—

[113] 'The woman should not pay the debt contracted by her husband or by her son. . . . If the husband, on the point of death, has asked his wife to pay his debts, she should be made to pay them if she has taken his assets,—even though she may not have promised to pay them.'

The rule briefly is as follows:—(*a*) If the woman has been made by her husband to promise that she would pay the debts,—then she must pay them;—(*b*) similarly, if she has no sons and has taken the family-assets, she should pay the debt, even though she may not have promised to pay it; for the simple reason that she has taken the assets.

Who is 'the person taking the wife' (of the deceased Debtor) is thus defined by *Nārada*—

[114] 'The last kind of the *Wanton Woman* and the first kind of the *Remarried Woman*,—the debt contracted by the deceased husbands of these should be paid by the man who has taken the widow'.—'When a man has died leaving no property or son, if a man takes his wife, he takes up his debts also; as his wife is the dead man's sole asset.' †

Who the 'last kind of *Wanton Woman*' is has been thus described in the *Kalpataru* (quoting *Nārada*)—

[115] 'When a woman, who has been already given away by her elders in accordance with the laws of the country,—if she is married to another man, in a wrongful manner, she is the *last kind of Wanton Woman*'—(12.52).

Another kind of *Wanton Woman* is thus described in *Ratnākara*—

[116] 'The woman who having come from a foreign country has been bought with money,—or being oppressed by hunger and thirst has given

* '*Accepted*'—This refers to a case where the promise has been made to the husband on his death-bed, or on going abroad, that she would pay his debts—(*Mitākṣarā*).

† According to *Vivādaratnākara* (p. 62) this refers to the case of women—distillers and others of that class, as expressly stated by *Kātyāyana* in another text, where the said persons are named.

herself to a man, saying *I am thine,*—she is the third * kind of *Wanton Woman* '—(12.51).

The first kind of *Remarried Woman* is thus described in *Ratnākara*—

[117] 'A maiden, who has not been deflowered, but has become unqualified for marriage by reason of the rites of *joining hands* having been gone through,—if married to another man, is the *first kind of Remarried Woman* '—(12.52).

Only these two kinds of women 'taken up' by other men have been mentioned (in Text 114 above) because these are considered superior to others (mentioned in *Nārada* 12.45–52). And the rule is that the man who has taken up these widows shall pay the debt contracted by their deceased husbands.

Says *Kātyāyana*—

[118] 'The debt that has been contracted by wine-distillers and the like, who have no assets and no children, shall be paid by one who enjoys their wives.'

The term 'and the like' is to be understood as including men whose livelihood depends upon their wives.

Kātyāyana again—

[119] 'Debts incurred by persons who have long been away from home, or are devoid of all relations, or are idiots, or insane,—shall be paid,—even though they themselves be alive,—by those who have taken their wives or assets.'

In this connection, the debts payable by those *taking the assets* and others are exactly those that would be payable by the sons (if there were any); but with this difference that in the case of those others, no Interest shall be payable, because the paying of the Interest has not been mentioned in connection with those, as it has been in connection with the son (in Text No. 84, for instance).

In the case where the Creditor is a *Brāhmaṇa* and he has died without issue,—what is to be done is thus declared by *Nārada*—

[120] 'If a debt is due to a Brāhmaṇa with progeny,†—and he, with his progeny, is no longer alive,—the debt shall be repaid to his *Sakulyas*; in the absence of *Sakulyas*, to his *Bandhus*; when there are no *Sakulyas* or *Bāndhavas*, it shall be paid to *Brāhmaṇas*; and when there are no *Brāhmaṇas*, it shall be thrown into water.'

Under similar circumstances, the debt due to the *Kṣattriya* and others is to be received by the King; as it has been declared that—'all property goes to the King, except the property of the *Brāhmaṇa*',—so that the property of the *Brāhmaṇa* should not be taken by the King.

When the payment of the debt has been demanded, and the Debtor has not paid it,—what should the Creditor do ?—This has been thus answered by *Manu* (8.48 and 49)—

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* In Nārada's text, and also in *Vivādaratnākara*, p. 62, we find the reading '*tṛtīyā*' in place of '*chaturthī*'.

† The reading in *Vivādachintāmaṇi* is '*sānvayasya*'; *Smṛtichandrikā*, p. 25, reads '*sonvayasya*'; which provides simpler construction. The meaning is the same in both cases.

[121] 'Having determined the means by which the Creditor may be able to get his money, he shall, by those same means, make the Debtor pay up—(48).—He shall have his dues paid by means of (*a*) good faith, (*b*) tactful transaction, (*c*) trick, (*d*) moral pressure, and (*e*) force '—(49).*

From among these, the Creditor shall have recourse to the succeeding only if he is unable to do it by means of the preceding method.

(*a*) What is meant by '*dharma*' (good faith) in this connection (in *Manu's* text) has been explained by *Bṛhaspati* (11.55)—

[122] 'When the Debtor is made to pay by messages through friends and relations, by friendly remonstrances, by constant following, or by fasting,—this is realising by *Good Faith.*'

'*Prāya*' stands for the Creditor threatening to fast till the payment of the debt.

[123] 'The *Brāhmaṇa*, however, who has been reduced in circumstances, should be made to pay by easy instalments, according as he obtains the means'—(*Yājña.* 2.43).

(*b*) What is meant by '*vyavahāra*' (Tactful Transaction) is thus explained by *Kātyāyana*—

[124] 'The Debtor should be caught and held up openly before the assembly of men, until he pays up the dues, according to the custom of the country.'

(*c*), (*d*) and (*e*) '*Chhadma*' (*Trick*), '*Ācharita*' (*Moral Pressure*) and '*Bala*' (*Force*) have been thus described by *Bṛhaspati*—

[125] 'When the Creditor, with a crafty design, borrows anything from the Debtor, or withholds a Deposit and such things, and thus makes him pay up the debt,—this is called realising by a *Trick*'—(11.56).

'*Upadhi*' is *trick.*

He goes on—

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* (*a*) '*Good faith*'—i.e. realising by easy instalments.—(*b*) '*Tactful transaction*' —this has to be had recourse to when the Debtor has no property; the idea is that the Creditor may make a further advance to him, to enable him to carry on some business and thereby acquire money wherewith to pay off the debt; this is what is meant by '*vyavahāra*' here; which cannot stand for *judicial proceedings*; as these have to be had recourse to only where all the said five means have failed.—(*a*) '*Trick*' —borrowing an ornament or some such article from him under some pretext and then retaining it until the debt is paid.—(*d*) '*Moral pressure*'—fasting and constantly sitting at the man's door.—(*e*) '*Force*'—making an application to the King who shall summon the Debtor and compel him to pay up.—The Creditor shall not have recourse to either *Trick* or Moral Pressure without notifying the same to the King—(*Medhātithi*).

'*Vyavahāra*', according to *Smṛtichandrikā*, is meant for the Debtor who has denied the liability; the others are meant for one who admits the debt. Evidently it takes '*vyavahāra*' in the sense of *judicial proceedings.*—Govindaraja, Kulluka, Nandana and Nārāyaṇa also take '*vyavahāra*' as *judicial proceedings*; Rāghavānanda takes it as *forced sale of property.*—*Aparārka* (p. 645) takes '*dharma*' as *truth*, '*vyavahāra*' as *evidence* documentary and oral;—'*ācharita*' as *local custom*; '*bala*' as *oppression by starving, etc.*—*Mitākṣarā* (on *Yājña.* 2.40) takes '*dharma*' as truthful persuasion,—'*vyavahāra*' as adducing witnesses, documents, etc. (i.e. judicial proceedings),—'*chhala*' as above,—'*ācharita*' as starvation, etc. and '*bala*' as force, in the shape of keeping him in chains and so forth.

Mitākṣarā (on *Yājña.* 2.40) reads '*acharita*' for '*ācharita*' and explains it as 'dropping all social intercourse, like dining and the like'.

[126] 'When the Debtor is made to pay by confining his wife, son or cattle, and by constantly sitting at his door,—it is called *Ācharita, Moral Pressure*'—(11.58).

[127] 'When the Debtor is bound and brought up to the Creditor's own house, where he is compelled to pay by beating and other means, it is called *Bala, Force*'—(11.57).

In all cases, the proper course is to *request* the Debtor to pay up. Says *Kātyāyana*—

[128] 'From the King, the Master and the *Brāhmaṇa*, one should realise his dues by means of *moral suasion*; from his heir and friend, one should realise it by means of *trick*.'

He proceeds—

[129] 'From traders, cultivators and artisans, one should realise his dues in accordance with the customs of the place [or *Moral Pressure*];—and from wicked persons, he should do it by means of *force*;—so says *Bhṛgu*.'

As regards the case where even keeping the Debtor under restraint does not bring about the payment of one's dues,—*Bṛhaspati* says—

[130] 'The indigent spirit-distiller and such other Debtors should be taken by the Creditor to his own house and made to work there; but a *Brāhmaṇa* should be made to pay gradually.'

Says *Yājñavalkya* (2.43)—

[131] 'If the Debtor of a low caste happens to be too poor to pay, he should be made to make good, by labour, the amount due from him; but the *Brāhmaṇa* reduced to poverty should be made to pay by easy instalments, according to his income.' *

If the Creditor has recourse to 'force', before trying the other methods, he should be punished; as says *Kātyāyana*—

[132] 'If, at the very outset, the Creditor should make the man to do mean work which has not been stipulated, †—he should suffer the First Amercement, and the Debtor should be absolved from the debt.'

What is meant is that—if, at the very outset, the Creditor makes the Debtor do some mean work,—for the purpose of liquidating the debt,—then he should be fined the First Amercement,—and the Debtor should be absolved from the debt.

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* '*Brāhmaṇa*', according to *Aparārka*, stands for the 'higher caste' in general; cases where the Debtor's caste is higher than that of the Creditor; and the term '*low caste*' includes the *equal caste* also.—The '*labour*', says *Mitākṣarā*, should be work in keeping with the man's caste, which can be done by him without detriment to his family-status.

† We have adopted the reading of the printed text, which agrees with the reading found in *Vivādaratnākara* (p. 71). *Mb* reads the first line as '*yadi hyādau balādiṣṭamashubham*', which means 'if the Creditor at the very outset should, by force, make the man do mean work, etc.'.—*Ma* reads—'*yadi vādau balādiṣṭam ṛnīkam karma kārayet*'—'If, at the very outset, the Creditor, by force, makes the Debtor do the work desired by the Creditor, etc.'.

Says *Nārada*—

[133] 'If, on account of changed times, the Debtor is unable to pay up, he should be made to pay gradually according to his capacity, as he goes on obtaining the necessary funds.' *

In a case where the Debtor is unable to pay the debt which, along with the Interest, has reached the maximum,—the Debtor himself should execute a bond on the basis of Compound Interest. As says *Bṛhaspati* (11.60)—

[134] 'When the time fixed for payment has elapsed, and Interest has ceased to accrue,—the Creditor should recover the loan; or the Debtor may execute a bond, on the basis of Compound Interest.'

After the accrued Interest, along with the original Principal, has become the new Principal,—more than double may be realised, even in the case of Pledge for Use, where the Interest consists in the use of the article pledged; as says *Bṛhaspati* (11.61)—

[135] 'Just as Compound Interest is charged on the doubled Principal, so is the use of the Pledge also; in which case the new debt (Principal) should consist of the price of the Pledge along with the Interest accrued.' †

What happens in the case of the Debtor not being there, has been thus declared by *Bṛhaspati* (11.29-30)—

[136] 'When the amount of the Principal has become doubled, and the Debtor is either dead or lost,‡ the Creditor may take his chattel and sell it before witnesses; or he may have its value estimated in an assembly of people and keep the chattel for ten days; after which he may realise his own dues, and relinquish the balance.—After having got his own dues precisely calculated by people versed in accounts, if the Creditor takes the chattel in the presence of the relations § (of the Debtor), he should not be regarded as having done anything wrong.'

Even when the Creditor realises his dues by 'force' and other such means,—he should not be reproved by the King. As says *Viṣṇu* (6.18)—

[137] 'A Creditor recovering the sum lent, by any means, should not be reproved by the King.'

'*By any means*'—i.e. by the several means of 'Good Faith' and the rest (enumerated by *Manu*, see Text 121 above).

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* *Smṛtichandrikā* (p. 389) restricts this concession to the *Brāhmaṇa* Debtor only (*vide* Text 131 above).

† In a case where Compound Interest is charged, the old Principal along with the Interest accrued becomes the new Principal, which is more than the double of the original Principal. Similarly in the case of the use of the Pledge also, if, by chance the Creditor has been able to enjoy it,—the value of that *use* along with the original Principal is made the new Principal and held by the Creditor on Interest; so that ultimately the enjoyment by the Creditor becomes more than the double of the original Principal. Or, if he so chooses, he may not restore the pledged article—(*Vivādaratnākara*, p. 72).

Jolly says that—the comparison here proposed relates to the case when a Pledge for Use has been accidentally destroyed, and a new bond is executed, in which the Interest is calculated on the Principal together with the lost usufruct.

‡ '*Lost*'—i.e. if he has absconded and cannot be traced—(*Vivādaratnākara*, p. 74).

§ '*Relatives*'—what is meant is that the witnesses to the transaction should be persons who would be trusted by the Debtor—(*Ibid.*).

Says *Yājñavalkya* (2.40)—

[138] 'If the Creditor presses the Debtor who has admitted the debt, he should not be prevented by the King. On being pressed, if the Debtor complains to the King, he should be punished and made to pay the debt due.'

'*Pratipanna*'—the person who has admitted the debt.

If the Debtor does not admit the debt and if he claims judicial investigation, he shall not be pressed (or put under restraint). As says *Bṛhaspati* (11.63)—

[139] 'A Debtor claiming judicial proceedings, in a doubtful case, should not be pressed. One who presses one who should not be pressed, deserves to be fined according to law.—A Debtor is called one "claiming judicial proceedings", if he makes a declaration in the form—"What may be found to be justly due from me, I shall pay". A case is called "doubtful" in which there is difference of opinion * between the two parties, as to (*a*) the nature, (*b*) the amount, (*c*) the Interest, or (*d*) if there is anything due at all.'

Says *Manu* (8.59)—

[140] 'One who falsely denies a debt, or one who falsely demands it,—these two, proficient in dishonesty, should be made by the King to pay a fine double the amount involved.'

This should be understood as applicable to cases where the person penalised is very wealthy.

Again—

[141] 'On the debt being admitted to be due, the Debtor shall pay a fine of 5 per cent; and in the case of denial, double the amount. Such is the ordinance of *Manu*'—(*Manu* 8.139).

When the Debtor has denied the debt at first, but admits it later on, his fine shall be 5 per cent. If he continues to deny it even later on,—then, on the debt being proved, he should be fined 10 per cent.† This refers to cases where the person penalised is possessed of little wealth.

Yājñavalkya (2.11)—

[142] 'If the Debtor denies the debt, and it is proved, he should pay the amount due and also a sum equal to the sum in dispute to the King. If the claim of the Creditor is found to be false, he should pay a fine double the amount of the claim.' ‡

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* The word in the original is '*bhrānti*', which means *mistake* or *doubt*; it has, however, been explained by *Vivādaratnākara* (p. 76) as '*vipratipatti*' and has accordingly been translated by Jolly as 'difference of opinion'.

† The Debtor having failed to pay the debt, the Creditor files a suit against him;—the Debtor, on being summoned, admits the claim and is ready to pay up; in this case the penalty is a small one,—a fine of 5 per cent, which is imposed on account of his having transgressed the law in not paying up out of Court;—but when he aggravates it further and denies it, and the Creditor succeeds in proving it, the penalty is *double*—i.e. 10 per cent; not the double of the amount of the debt, as some people have explained—(*Medhātithi*).

‡ This rule of *Yājñavalkya's* conflicts with the one laid down by *Manu* (Text 141, above), where the penalty is only 5 and 10 per cent of the total claim. The *Chintāmaṇi* has solved the difficulty by relating *Manu's* rule to the case of poor Debtors and *Yājñavalkya's* to the case of middle-class Debtors.

[143] 'This is the law relating to either of the two parties who is defeated in a regular confutation of the suit; so also relating to either of the two parties in a case based upon a Previous Decision.' *

The law herein laid down is applicable to the case of false suits and also to that covered by a Previous Decision.

Says *Yama*—

[144] 'If the Debtor, who is wealthy, does not pay the debt through sheer wickedness, the King should realise from him a fine double the amount of the sum in dispute and compel him to pay off the debt.'

And *Viṣṇu* (8.20-21)—

[145] 'If the Creditor should approach the King and prove his claim, the Debtor shall pay to the King, as fine, the tenth part of the claim; and the Creditor, on receiving his dues, shall pay to the King the twentieth part of his claim.' †

Says *Kātyāyana*—

[146] 'Where several debts have become payable at the same time, that which was contracted first should be paid first; but that due to the *Kṣattriya* should be paid after the payment of that due to the Vedic Scholar.'

[147] 'If several debts have been contracted on the same day, the Debtor's assets are to be divided equally among the Creditors; the balance, if any, shall be either kept in deposit or distributed as Interest, according to the priority of the claims.'

[148] 'If a Creditor proves that the Debtor invested in merchandise the money borrowed from him, then the proceeds of the sale of that merchandise shall go towards the payment of that particular debt, not otherwise.'

What is meant is that, in the absence of other assets, the said proceeds shall be given to that same Creditor.

Yājñavalkya (2.94)—

[149] 'Having paid off the debt, the Debtor should tear off the bond; ‡ or for the purpose of acquittance, he should have another document executed (by the Creditor, by way of acquittance-receipt).—The debt that has been contracted before witnesses should be discharged also in the presence of witnesses.' §

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* Text 143 is not *Yājñavalkya's*. It may be *Vyāsa's*; as remarked by *Vivādaratnākara* (p. 78)—These two texts—one from *Yājñavalkya* and the other from *Vyāsa*—are not found in this section of the *Kāmadhēnu*; but they have been quoted here as found in *Kalpataru*.

† The Creditor has committed no wrong; he pays this, therefore, to the King, not as fine, but as fee for helping him in the realisation of his dues—(*Vivādaratnākara*, p. 78).

‡ This second alternative is meant for cases where the original bond cannot be found and hence cannot be torn off—(says *Smṛtichandrikā*, p. 377).

§ If the original witnesses before whom the debt had been contracted are not available, the repayment may be made in the presence of other suitable witnesses—(says *Smṛtichandrikā*, p. 377).

CHAPTER II

On Deposits

Says *Nārada* (2.1)—

[150] 'When a man, through confidence, entrusts his property to another person, without any misgivings, it is called, by the learned, '*Nikṣēpa*', *Deposit ;* which forms a Title of Law.' *

Manu (8.179)—

[151] 'The wise man shall entrust a Deposit to one who is born of good family, is endowed with character, cognisant of the Law, and truthful, has a large following and is wealthy and honourable.'

'*Mahāpakṣa*' is one who has a large number of relatives.

Yājñavalkya (2.65)—

[152] 'When something is placed in a receptacle without being disclosed and is handed over as such to another person, it is called *Upanidhi, Sealed Deposit,* and it should be restored exactly in the same condition.' †

Nārada (12.5)—

[153] 'The Deposit is of two kinds—(1) with witnesses, and (2) without witnesses; the restoring of it should be in the same way; otherwise a Surety should be provided.'

'*Otherwise*'—i.e. if the Deposit is not restored, the Depositary should provide a Surety.

[154] 'The sin of those who consume, or spoil by negligence, a bailed Deposit is as great as that of a woman who injures her husband, or of a man who kills his own son or friend '—(12.7).

[155] 'It is best not to accept a Deposit; but destroying it (after receiving it) is disgraceful. After having received it, one should keep it with care and restore it when it is asked for even once '—(12.8).

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* There are five heads under which this *Deposit* has been divided—(1) *Open Deposit—Nikṣepa* proper,—when the depositor hands over the article openly to the Depositary, after counting it;—(2) *Upanidhi, Sealed Deposit*—when the property is handed over covered and sealed within a box without the contents being disclosed or described or counted;—(3) '*Nyāsa*', Trust,—that Deposit which is handed over, not to the Depositary personally, but to his son or others with the request that it should be delivered to the master when he comes home;—(4) '*Yāchita*', Borrowed,—when an ornament or some such small article is borrowed for a special occasion;—(5) '*Anvāhita*', Bailment for Delivery,—when a Deposit entrusted to a person is made over to a third party for being delivered to the original owner.—According to *Yājña.* 2.67, the rules relating to *Nikṣepa,* Deposit in general, are applicable also to the other kinds of Deposits. (See *Hindu Law in Its Sources*, Vol. I, pages 224-225.)

† '*Without being disclosed*'—i.e. its nature, number, size and other characteristics not being made known to the Depositary.—'*Exactly in the same position*'—i.e. sealed—(*Aparārka*).

'*Vāsana*', Receptacle—such as a casket or a box—(*Vivādaratnākara*, p. 84).

So also *Bṛhaspati* (12.9)—

[156] 'The Depositary shall restore the Deposit exactly as it had been entrusted to him, in the same manner and to the same person; it should never be restored to the Depositor's next of kin.'

'*Next of kin*'—i.e. the son and others.
Says *Manu* (8.186)—

[157] 'If, on the death of the Depositor, the Depositary himself (without being asked) restores it to the Depositor's next of kin,—he should not be prosecuted by the King or by the relatives of the Depositor.' *

And *Nārada*—

[158] 'If the Deposit has been destroyed along with the Depositary's property, the loss is the Depositor's; so also if the loss has been due to an act of God or King; except when it has been due to the dishonesty of the Depositary.'

What is meant is that the loss is *of the Depositor alone*; that even when the loss has been due to an act of the King,—if it has been brought about by some fraud committed by the Depositary,—it has to be made good by the latter. Thus the principle is that—if the loss has been due to a fault of the Depositary, he should restore it;—if he has not been at fault, he should not have to restore it;—similarly if he has been dishonest, he should restore it,—if he has not been dishonest, he should not have to restore it.
This is what is meant by *Manu* also (8.189)—

[159] 'If the Deposit has been stolen, or washed away by water, or burnt, —the Depositary shall not have to make good the loss; if he has not extracted anything from it.'

That is, if the Depositary has extracted something from the Deposit, and deposits the remnant somewhere else,—with the motive that he may not have to restore the Deposit at all,—then he shall be made to restore the entire Deposit.
With reference to the '*Yāchitaka*', 'Borrowed',—(the fourth kind of Deposit—*vide* footnote under Text 150)—says *Kātyāyana*—

[160] 'On the lapse of the stipulated time, or after the completion of the business (for which the article had been borrowed)—if the borrower does not restore it, even on being asked to do so,—then, in the event of its being lost or stolen, the borrower should pay its price.'

What this means is as follows:—When the article has been borrowed for the purpose of a certain business,—on the accomplishment of that purpose, or after the lapse of the stipulated time,—if the owner of the article asks the borrower to return it, but the latter does not restore it,—then, after that, if the thing becomes destroyed by an act of King or God, the borrower must restore the loan by paying its price.

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* Says *Vivādaratnākara* (p. 87)—'On the death of the Depositor, if the Depositary restore the Deposit to his heir, he should not be harassed by the King or by the dead Depositor's relatives. The term *svayameva*, *himself*, implies that during the Depositor's lifetime, the Depositary should not deliver it to the heir, even though asked to do so, by the latter;—but that on the Depositor's death, he may deliver it to his heir, even without being asked to do so'.

Nārada (2.14) also—

[161] 'This same rule has been applied to cases of—(*a*) 'Loan for a special purpose' (*Yāchitaka*), (*b*) 'Bailment for Delivery' (*Anvāhita*), etc., and also (*c*) Articles made over to artists, (*d*) Sealed Deposits (*Upanidhi*), (*e*) Secret Deposits (*Nyāsa*), and (*f*) Mutual Deposits (*Pratinyāsa*).' *

'In regard to even an old-standing Deposit, when a man wishes to hide or deny it, he throws into it something of his own, and when he restores it, on request, he is not regarded as a thief; but if he does not restore it, he is regarded as a thief. In all such cases, the right decision can be arrived at only after due investigation.'

This passage has been written in this context, in the *Ratnākara*.†

Says *Bṛhaspati* (12.11)—

[162] 'If the Depositary should destroy (damage) the Deposit, through discrimination (as between his own property and the Deposit) and consequent neglect,—or if he fails to restore it when asked to do so,—he should be made to pay its price with Interest.'

That is, if the man differentiates his own property from the Deposit,—taking special care of the former, and not of the latter,—then also he should pay it.

Similarly in a case where, on being asked to deliver the Deposit, he did not do so,—and after some time, he is arrested by the King,—he should pay the price with Interest.

As says *Nārada* (2.7-8)—

[163] 'If the Depositary does not restore the Deposit on demand, he should be fined by the King, and in case the Deposit has been lost, he should be made to pay a sum equal to the price of the Deposit.

[164] 'If he derives profit from it (by using it) without the Depositor's consent,‡ he shall be fined likewise, and shall deliver the profit, together with Interest, to the Depositor.'

And *Vyāsa*—

[165] 'If the Deposit has been consumed, the Depositary should pay its price with Interest; if it has suffered from neglect, he should pay just the price; if it has been lost through stupidity, he should pay a little less.'

Says *Manu* (8.193)—

[166] 'The man who would appropriate, by fraudulent means, the property of another person, should be punished publicly, along with his accomplices, with various modes of corporeal punishment.'

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* 'Articles made over to the artist'—i.e. materials given to him to be worked upon; e.g. gold delivered to the goldsmith for making the ear-ring.—'*Nyāsa*' is secret Deposit; handed over to some member of the family, without the knowledge of the Master of the house.—'*Pratinyāsa*' is a mutual bailment, both parties exchanging Deposits with one another—(*Vivādaratnākara*, p. 96). See also the first footnote of this chapter.

† No such passage is found in *Vivādaratnākara*; nor is it intelligible.

‡ *Vivādaratnākara* (p. 90) explains this as 'against the wishes of the Depositor'.

'*Upadhā*' is *fraud.*—'*Accomplice*'—people who help him in the act of misappropriation.—'*Corporeal punishment*'—such as being put in chains, beaten and so forth.*

This same rule applies to other similar transactions also; as says *Bṛhaspati* (12.15)—

[167] 'The rules laid down above are applicable also to cases of—Bailment for Delivery, Loan for a Special Purpose, Articles made over to artists, Pledges and Persons seeking refuge.'

'*Articles made over to artists*'—when, for the purpose of making ornaments and things, gold and other metals are made over to artists.

When such articles are misappropriated 'by fraudulent means', the punishment is to be as declared (above, by *Manu*).

[Says *Kātyāyana*]—

[168] 'When an artist has undertaken to repair an article within a stipulated time,—if [he keeps it beyond that time, and] the article becomes lost,—he should be made to pay for it; even when the loss may have been due to an act of God.'

What is meant is that the article becomes due from the artisan only after the lapse of the time stipulated for the work,—not before that.

Says *Manu* (8.191)—

[169] 'One who does not restore a Deposit, and one who, without having made a Deposit, claims it,—both of them shall be punished like thieves, or be made to pay a fine equal in value to the Deposit in question.'

In this same text, the *Matsyapurāṇa* reads '*dviguṇam damam*' ('the fine is to be double the value of the Deposit').

The penalty herein laid down (by *Matsyapurāṇa*) is meant for cases where the culprit is very rich and of mean behaviour; while that prescribed by *Manu* is for the culprit who is poor, but of good behaviour.†

Kātyāyana—

[170] 'In cases where another man's property, in the shape of Deposit and the like, has been consumed or neglected or destroyed through ignorance—it has to be made good by that same person who was liable for the same.'

The term '*ēva*', 'same', serves to exclude the Depositary's son or other relatives who were not involved in the fault.

Gautama (12.42)—in continuation of the words '*na adhyāvayēyuḥ*', 'shall not involve'—says—

[171] 'Deposits, Articles bailed for delivery, Articles borrowed for a special purpose, and Articles taken on hire and the rest,—if lost,—[shall not involve] all those men who cannot be blamed for the fault of the Depositary.'

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* In the case of *Deposits*, the 'fraudulent means' would consist in putting off the restoration by such pretexts as—'I do not remember where I kept the thing' or 'it was kept by someone else who is not here at present', and so forth—(*Medhātithi*).

'*Prakāsham*'—e.g. in the public square—(*Vivādaratnākara*, p. 92).

† *Vivādaratnākara* (p. 91)—If the property involved is valuable, then alone should the 'punishment of the thief' be inflicted; in ordinary cases, the man should be simply fined; in either case, the Depositary is to be made to restore the Deposit.

*'*Avakrītam*' stands for what has been taken on lease at a certain rent.—'*All those men*'—i.e. sons and others who are free from all blame in the matter.

With reference to *Sealed Deposits* (*Upanidhi*), says *Kātyāyana*—

[172] '(*a*) Purchase, (*b*) Deposit on behalf of a person gone abroad, (*c*) Pledge, (*d*) Bailment for Delivery, (*e*) Article borrowed, and (*f*) What has been lent with a commercial motive,—all this is to be treated as *Upanidhi*, *Deposit*.'

(*a*) '*Kraya*'—the article that has been sold but has, somehow, been left in the hands of the seller;—(*b*) the Deposit made by some one while the owner of the article has been abroad;—(*f*) '*What has been lent with a commercial motive*'—i.e. what has been handed over with a view to profit.—(*d*) '*Anvāhita*'—Counter-deposit;—what is meant is that all these cases, the guarding, restoring, investigation and inflicting of punishment, have to be done as in the case of '*Nyāsa*', *Deposit* in general.†

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* *Vivādaratnākara* (p. 89) cites the example of the Cart and such things.—'All men'—i.e. sons, grandsons and other heirs.—'*Who cannot be blamed*'—who are free from all blame in the matter.

† The definition of '*Upanidhi*' here provided by *Kātyāyana* is different from, and much wider than, the one accepted by all other authorities; that is, if the words of *Kātyāyana* are taken literally. Both *Vivādachintāmaṇi* and *Vivādaratnākara* felt this discrepancy; hence they have provided a somewhat different explanation of the text, which has been adopted above, in the translation.—According to *Vivādaratnākara*—'*Proṣitanikṣēpa*' stands for what has been deposited by a man going abroad;—'*Vaishyavṛttyārpīta*' is what has been made over for purposes of trade. It concludes—'All these have to be treated as *Upanidhi* (Sealed Deposit)'.

CHAPTER III

Sale without Ownership

Nārada—[This is really *Manu* 8.199]—

[173] 'If a gift or a sale has been made by one who is not the owner of the property concerned, it should be held to be as *not-made*; such being the rule of judicial proceedings.'

And *Kātyāyana*—

[174] 'Sale, Gift, Pledge—if made by one who is not the owner,—should be annulled.'

Manu (8.197-198)—

[175] 'If a man sells another man's property, without being its owner, and without the owner's consent,—he should not be treated as reliable; he being a thief, though not regarding himself as such.—If he belongs to the 'family' of the rightful owner, he should be made to pay the fine of Six Hundred; and if he does not belong to his 'family',—nor one having access (to the household), he shall be dealt with as having committed the crime of theft.'

'*Sākṣya*' is *reliability*.—'*Avahāryaḥ*'—should be made to pay.—'*Sānvayaḥ*'—being a member of the race of the owner of the property in question.*—'*Niranvayaḥ*'—one who is not a member of his race.—'*Anapasaraḥ*'—having no plausible means of getting at the thing in question, such as receiving it as a *gift* and so forth.—He should be fined 600 *Paṇas*.

Again—

[176] 'The man effecting a sale without ownership should be punished in this manner, if he has done it unintentionally. In case he has done it intentionally, he deserves the same punishment as the thief.' †

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* In all such passages, the term '*anvaya*' is used in the etymological sense—'those coming after'—i.e. offspring or progeny; 'one who bears the relationship of *anugamana*'—says *Medhātithi*. It thus stands for 'family' in the restricted sense. The *Vivādachintāmaṇi* itself has explained it in this same passage as 'belonging to the same *vamsha*', and '*vamsha*' is *race, dynasty*.—*Vivādaratnākara* (p. 103) explains '*anvaya*' as '*putrādi*', 'son and the rest'.—Similarly where *Kātyāyana* speaks of 'emancipating the slave-girl whom one has been treating as his mistress—along with her *anvaya*', the term clearly stands for the *progeny* of the girl, who is emancipated along with the girl; *Vāchaspati* himself explains the term as '*svajanitaputra-sahitā*', 'along with her son begotten by himself' (see Text No. 301 below, Text p. 70).—In another text (quoted on p. 194 of the printed Text No. 867) the daughter is spoken of and then follows the term '*tadanvayaḥ*', '*anvaya* of the daughter', which *Vāchaspati* explains as '*dauhitras*', 'sons of the daughter'.—Again on p. 222, Text No. 984, in *Yājñavalkya's* text we find the expression '*tābhya ṛetē'nvayaḥ*', 'in their absence, the *anvaya*', which term is explained by *Vāchaspati* as 'sons and daughters'.—*Mitākṣarā* on 2.175 explains '*anvaya*' as '*putrapautrādi*', 'sons, grandsons and the rest'; and that *progeny* alone are meant is clear from the reason that is adduced.—On the same text, *Aparārka* renders the term '*anvayā*' as '*svasantānē*', 'one's own offsprings'.—*Vivādaratnākara* on p. 458 quotes *Pārijāta* and *Prakāsha* as explaining '*anvaya*' as 'son, grandson, etc.'.

See notes under Texts 237, *et seq.*

† This text is quoted as if it were from *Manu*; but it is not found in *Manu*.

That is, if one sells what belongs to another, unwittingly, he should be fined 600; whereas if he does it intentionally, he should be punished like a thief,—i.e. having his hands cut off and so forth.

When the article sold is found in the hands of the Buyer,—and some one comes and tells him 'this is mine, give it to me'; and the man being a gentleman, what he should do under the circumstances, is thus declared by *Bṛhaspati* (13.4)—

[177] 'When the rightful owner turns up and establishes his ownership over the chattel, the Purchaser should produce the source of his Purchase; by doing this, he becomes cleared.'

'*Source*'—i.e. the person from whom he got the thing [i.e. the *Seller*, says *Vivādaratnākara*, p. 101].

Kātyāyana—

[178] 'The Purchaser should prove that the Purchase was open and public; or he should produce the Seller. For the producing of the Seller, time should be given to him in proportion to the distance of the place where the Seller may be residing.—In a case where, having at first named the Seller, if the Purchaser (drops that and) again takes his stand upon the Purchase-transaction,—he should try to produce the Seller, as no useful purpose would be served by putting forward (and relying upon) the Purchase itself.'

The genuineness of the Purchase also would be established only by the producing of the Seller; hence it is only when the Seller cannot be traced that the genuineness of the Purchase-transaction itself should be sought after.

'*Prakāsham*'—i.e. it should be proved that the sale was open and public.

As regards what should be done after the Seller has been produced, —*Vyāsa* says—

[179] 'When the Seller has been produced, the Purchaser should not be prosecuted any further; thenceforward the dispute shall lie between the Seller and the owner of the lost property.'

'*Nāṣṭika*' is the man who has lost his property.

Says *Bṛhaspati* (13.3)—

[180] 'In a case where the Vendor has been produced, and he loses in the judicial proceedings, he should pay to the Purchaser the price of the commodity sold, and a fine to the King; the property itself he shall restore to the rightful owner.'

In the event of the Purchase-transaction itself being found to have been improper, the Purchaser also is to be fined; as says *Nārada*—

[181] 'If one buys a chattel from a slave without his master's permission, or from a wicked person, or in secret, or at a low price, or at an improper time,—he incurs the same guilt.'

That is, the guilt incurred by him is the same as that by the man who sells a thing without ownership.

Also by concealing the man who sold the thing to him, the Purchaser incurs the same guilt,—says *Nārada*—

[182] 'The Purchaser should not conceal his source; his clearance follows from the producing of the source; otherwise, he shares the guilt and becomes liable to the same punishment (as the Seller).'

'*Otherwise*'—i.e. if he conceals the man who sold the thing to him.
[*Kātyāyana*]—

[183] 'If the Purchaser does not produce the Vendor, or if he fails to prove the *bona fide* character of his Purchase, he should be made to pay to the owner the amount claimed by him, and also a fine to the King.'

Says *Manu* (8.202)—

[184] 'If the source (the Seller) cannot be traced, and the Purchaser has cleared himself by showing the open and *bona fide* character of his Purchase,—he should be let off without punishment; but the property should be restored to the rightful owner.'

In a case where the Purchase-transaction has been open and public,—and yet the rightful owner has established his ownership,—but the Seller has gone abroad and cannot be produced,—the Purchaser shall not be punished by the King; but the property concerned shall be made over to the rightful owner.

Says *Kātyāyana*—

[185] 'The owner of the lost property should, first of all, prove his ownership by means of witnesses knowing it; and if he proves that the thing had never been given away or sold by himself, he establishes his ownership and obtains the property.'*

In regard to the case where the open Purchaser is unable to produce the Vendor, because his place of residence is not known,—*Bṛhaspati* says—

[186] 'In a case where there is no evidence, the King shall take into consideration the character of the parties concerned, and decide the case and apportion the chattel between them equally or more or less, at his own discretion'—(13.6).

[187] 'In a case where the Purchaser has bought the chattel in the open market-place, and in the presence of the King's officers,—but from a person whose habitation is not known to him,—or who has since died,—the rightful owner shall pay him half the price of the chattel concerned and take away the chattel itself; each of the two parties thus losing half of the price, as a result of the proceedings'—(13.7-8).†

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* *Vivādaratnākara* (p. 106) lays down the following procedure:—(1) The owner has to prove that the chattel belongs to him;—(2) in order to clear himself, the Purchaser should prove that he is a *bona fide* Purchaser;—(3) in support of this, he should produce the Vendor;—(4) if he is unable to trace and produce the Vendor, he should prove that his Purchase was open and public, by means of witnesses knowing all about it.

In such cases, remarks *Medhātithi*, the nett result is that the Purchaser is let off without punishment, but he loses the price that he had paid for it.

† That is, both parties—the Purchaser as well as the owner—are penalised to the extent of half of the value of the article; the former for making the purchase from an unknown person, and the latter for neglecting to take due care of his property (*vide* next Text 188)—(*Vivādaratnākara*, p. 109).

Vīramitrodaya (p. 381) remarks that this rule applies to cases where the owner is unable to produce *adequate* proof of his ownership; if he is able to prove it, he recovers the property without having to pay anything to the Purchaser.

Again—

[188] 'A mistake is committed when one buys a thing from an unknown person,—and also when one does not take due care of his property; both these mistakes have been declared by the wise to be the cause of losing one's property'—(*Bṛhaspati* 13.9).

In a case where the owner is unable to prove his ownership, the chattel goes to the man who has purchased it openly; and it is the owner (claimant) who is punished;—as declared by *Kātyāyana*—

[189] 'If the owner fails to prove his ownership by means of knowing witnesses, he should be punished like a thief,—with a view to prevent the repetition of such misbehaviour.'

In certain cases buying from the rightful owner also is wrong; as says *Bṛhaspati* (13.10-11)—

[190] 'When a man has purchased a chattel at a fair price, having notified it previously to the Supervising Officer, no blame attaches to him; but he would be a 'thief' if it were an 'Improper Purchase'.—If a Purchase has been effected within a closed room, or outside the village, or at night, or secretly, or from a wicked person,* or at a very low price,—it is an *Improper Purchase*.'

This should be treated as purchasing from one who is not the owner. So also *Viṣṇu* (5.166)—

[191] 'If one purchases a thing in secret and quietly, and under its price,—the Purchaser [and the Vendor] † should be punished like thieves.'

Says *Yājñavalkya*—

[192] 'If a man recovers from another person's hand some chattel that had been stolen or lost,—without notifying it to the King,—he should be fined 96 *Paṇas*.' ‡

He should be punished for depriving the State of the dues payable to it under the circumstances.

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* This also includes slaves and others of the lower class—according to *Vīramitrodaya* (p. 375).

† *Viṣṇu's* text mentions both 'Purchaser' and 'Vendor'; though the printed text and MSS. of *Vivādachintāmaṇi* have '*Krētā*', 'Purchaser' only.

‡ If a man discovers his lost or stolen property with a certain person and recovers it from him, without reporting it to the King, he is to be punished like a thief; because he has concealed his acquisition, like the thief—(*Vivādaratnākara*, p. 110).

CHAPTER IV

Joint Concerns

On this point, says *Yājñavalkya* (2.259)—

[193] 'When a group of tradesmen carry on business jointly, for the purpose of making profit, the profit and loss of each shall be, either in proportion to the share of the capital contributed by each, or as may have been agreed upon among themselves.' *

In the absence of a previous agreement, the profit and loss shall be in proportion to the capital; but when there is a previous agreement, they shall be in accordance with that agreement.

Bṛhaspati (14.8)—

[194] 'When any loss or diminution has occurred through the act of God or King, it should be borne by all the partners in proportion to their respective shares.'

'Loss'—of *Capital*, and 'diminution'—of *Profit*.

The exception to this rule is laid down by the same writer—

[195] 'When any one partner, acting without the consent of others, or against their express instructions, injures the property through negligence,—that loss has to be made good to all the partners by that same partner.'

'*Anirdiṣṭa*'—not permitted; which they have not assented to.

Similarly, *Bṛhaspati* (14.10)—

[196] 'That partner who, by his own efforts, saves the merchandise from dangers due to the act of God and King, shall receive the tenth part of that merchandise; the remainder being distributed among the other partners, according to their respective shares.'

Nārada (3.6) also—

[197] 'When any danger has arisen from an act of God, or from thieves, or the King or fire,—if a partner makes special efforts to save the merchandise,—his share has been declared to be the tenth part of it.'

Kātyāyana—

[198] 'If a partner has saved a commodity from thieves, or from floods, or from fire,—he should receive its tenth part. This rule applies to all commodities.'

* Business is said to be 'carried on jointly', when there is an agreement among a number of tradesmen to the effect that they would carry it on as a Joint Concern. Tradesmen and others have recourse to this method of doing business, for the purpose of making larger profits than they could make, each on his own account. The profit and loss of each partner shall be determined by the share of the capital contributed by him; or, when starting the business, they may have entered upon an agreement to some such effect as—'*A* shall be the predominant partner and shall receive half of the profits and the other half shall be divided equally between *B* and *C*', and so forth—(*Mitākṣarā*).

Some people hold that this rule applies also to the case where the commodity concerned belongs to a single person (and it has been saved by an outsider).—That cannot be right; because the texts occur under the context of 'Joint Concerns'.—*Ratnākara* * and others also hold this same opinion.

These partners in a Joint Concern should carry on the business without deception to one another; as says *Vyāsa*—

[199] 'They should carry on sales and purchases after due consideration of the nature of the merchandise,—either in the presence or in the absence of one another, without any deception.'

And *Bṛhaspati*—

[200] 'When any one among the partners has been found to have practised deceit in buying and selling, he should have to clear himself by means of oaths.—This is the rule that should be followed in all disputes.'

'*Oaths*' have been mentioned only by way of illustration; what are meant are 'proofs' of various kinds; as it is possible for buyers and purchasers to have *witnesses* also.

That such a deceiver should suffer loss also has been thus declared by *Yājñavalkya* (2.265)—

[201] 'If any one of them is found to be crooked,† they should turn him out, depriving him of any profits that he may have earned.—If any of the partners is honestly unable to do his share of the work in the Concern, he should have it done by some one else (as his substitute). This same rule applies to the case of Priests, Cultivators and Artisans.'

What is meant is—(*a*) that the dishonest member they shall turn out after having paid him his share of the capital ‡;—(*b*) that, in case the man is not dishonest, but is honestly unable to do his share of the work of looking after the property, or in other kinds of work in the Concern,§—then he should employ another person (on his behalf) who would be able to do his share of that work.

If a partner, who was capable of looking after the business, happen to die,—what is to be done is thus asserted by *Nārada* (3.7)—

[202] 'If any one of the partners happen to die, his heir shall receive his share; if he has no heir, it may go to some one else who may be able to do the dead man's work ‖;—or to all the partners.'

On the death of an efficient partner, his heir should look after the commodity and obtain the tenth part of it; if no heir is there, it shall go to some one else who may be able to look after the dead man's share of the work; and in the absence of any single person capable of taking on the the dead man's work, all the partners shall jointly look after the business and take the tenth part of it.‖

* *Vide Vivādaratnākara* (p. 114), where, however, there is a misprint.

† That is, secretly carrying on business on his own individual account—says *Aparārka*.

‡ So also *Vivādaratnākara* (p. 115).

§ Such as looking after the stores, examining the account and so forth—says *Mitākṣarā*.

‖ The *Vivādaratnākara* (p. 115) puts this more clearly:—Among the co-sharers, if any one becomes *incapacitated* (it reads '*vyasanam*' in place of '*maraṇam*', death), his heir should look after the business (in his place) and take the tenth share due to him;—if there is no heir, then any one from among the partners, who may be

What should be done in the case of the death of the owner of the entire commodity is thus declared by *Nārada* (3.16)—

[203] 'If a trader travelling away from his country should happen to die, the King should keep his commodity in safe custody, till his heirs turn up.'

So also *Bṛhaspati* (4.11)—

[204] 'If a trader happen to die by accident, his goods should be shown by the King's officers appointed (for such purposes)';

that is, they should be shown to the King;—

[205] 'When any one comes forward claiming to be the man's heir, he should establish his claim by the evidence of other people; then he becomes entitled to receive the goods'—(*Bṛhaspati* 14.12).

Nārada (3.17)—

[206] 'If there are no heirs, the King shall deliver the goods to his *relatives* (*Bandhus*) and Kinsmen (*Jñātis*); on failure of these, the King shall keep the goods in safe custody for a period of ten years.' *

Some one has held that all this is meant for the case of the death of a single trader (not to a partner of a Joint Concern).†

Says *Bṛhaspati* (14.13)—

[207] 'Out of the goods, the King shall take the *sixth* or the *ninth* or the *tenth* ‡ part, if they belong to the *Shūdra*, the *Vaishya* or the *Kṣattriya* (respectively); from the *Brāhmaṇa*, he shall take the twentieth part.'

[208] 'After the lapse of three years, § if no claimant to the property turns up, the King shall take it to himself; the property of the *Brāhmaṇa*, however, shall go to the *Brāhmaṇas*'—(*Bṛhaspati* 14.14).

Baudhāyana—

[209] 'The property belonging to a non-Brāhmaṇa, who is lost,—the King shall keep for a year and then take to himself.'

There are thus two alternative periods for retaining the goods in custody (*three years* laid down by *Bṛhaspati* and *one year* laid down by *Baudhāyana*); such diversity is due to the greater or less distance of the places from where

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capable of doing his own share of the work and also that of the dead man, shall do all that work and obtain the tenth share (belonging to the dead partner);—if all the partners are equally capable of taking on themselves the additional work of the dead partner, then they shall jointly do that additional work and obtain his tenth share.

The printed edition is defective; after '*tadabhāvē*', there should be the words '*anyastadvad rakṣitā tadabhāvē*', as found in Ma and Mb.

* The first claim is that of the *Bandhus* (relatives on the mother's side, according to *Mitākṣarā*; *wife, daughter and other relations*, according to *Aparārka*);—after them, come the *Jñātis* (*Sapiṇḍas* or relations on the father's side, according to *Mitākṣarā*; *Samānodakas*, according to *Aparārka*).—In the absence of *Bandhus* and *Jñātis*, the property should go to the maternal uncle and such others,—says *Halāyudha*, according to whom '*Bandhu*' and '*Jñāti*' stand for *near relations* except the direct heirs—(*Vivādaratnākara*, p. 116).

† This note is not found in Ma and Mb.

‡ *Vivādaratnākara* (p. 116) reads '*dvādasham*', 'twelfth' here. So also Jolly.

§ The printed text reads '*abda*' which is wrong; the right reading '*tryabdam*' is supplied by the MSS.

the claimants might be expected to arrive, which would determine also the time likely to be taken.

Says *Nārada* (3.18)—

[210] 'When the owner of the property is not there, nor is there his heir, the King shall keep it for ten years * in safe custody and then take it to himself; in this there is no wrong done.'

[211] 'When an officiating Priest has become disabled, another Priest shall do his work and receive from him that portion of the Fee which may be commensurate with the work done by him'—(*Nārada* 3.8).

As a general rule *Bṛhaspati* (14.15) has the following—

[212] 'From among persons engaged in a Joint Concern, if some one becomes disabled, his share of the work shall be done by a kinsman of his, or by all his associates.'

Yājñavalkya (2.65)—

[213] 'If any one of them is found to be crooked, they should turn him out, depriving him of any profits that he may have earned.—If any of the partners is honestly unable to do his share of the work in the Concern, he should have it done by some one else.—*This same rule applies to the case of Priests, Cultivators and Artisans*.'

[This is the same as Text No. 201 above, quoted again, in reference to the work of the Priests, etc.]

What is meant is that these (Priests, etc.) also should carry on their business as 'Joint Concerns'. So that—

[214] 'If a Priest appointed to officiate at a sacrifice abandons his work, his associates shall pay him only such part of the Sacrificial Fee as may be commensurate with the work actually done by him'—(*Manu* 8.206).

That is, if any one of the Priests happen to abandon his work in course of the performance,—on account of illness or such causes,—only that portion of the Sacrificial Fee is to be given to him as may be in proportion to the part of the work that he might have accomplished before leaving.

Similarly—

[215] 'If a Priest abandons the work after the Fees have been given, he shall receive his full share of it, but the work left unfinished, he should get done by some one else'—(*Manu* 8.207).

The time for the giving of the Sacrificial Fees has been prescribed as that of the 'Midday Extraction' and the like; if the Fees have been given away at the prescribed time, and then a certain Priest, on account of illness and such other causes, retires and gives up the work, he obtains his full share of the Fee; but the remaining part of his work he should get done by his son or other relatives.

Again—

[216] 'Among the Priests, the principal men shall receive *half* of the whole (Fee); those belonging to the second grade shall receive half of that;

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* The note that *Vivādachintāmaṇi* has on Text 209 above,—*Vivādaratnākara* has got on this text; so that the alternative of '*ten* years' also becomes included under the purview of that note.

those of the third grade shall receive the third part; and those of the fourth grade shall receive the fourth part'—(*Manu* 8.210).

In connection with the *Jyotiṣṭoma*, we read 'He initiates them with a hundred'; which means that a hundred cows are the Sacrificial Fee prescribed for that sacrifice.—Now the question arises—Which Priest should receive how many cows? The answer is as follows:—(*a*) The 'principal' ones among the Priests—i.e. the *Hotṛ*, the *Adhvaryu*, the *Udgātṛ* and the *Brahman*—shall receive '*half of the Fee*'; which, in view of the subsequent allotments, has been computed to be two less than the exact half; hence the said four Priests are to receive *forty-eight* cows.—The Priests of the *second grade*—i.e. the *Maitrāvaruṇa*, the *Prastotṛ*, the *Brāhmaṇāchashosin* and the *Pratiprasthātṛ*,—are to receive the half of what is given to the principal Priests; that is, they get *twenty-four* cows.—The Priests of the *third grade*,—i.e. the *Achchhāvāka*, the *Nēṣṭṛ*, the *Agnīdhra* and the *Pratihartṛ*—are to receive the third part of what is given to those of the first *grade*; so that these get *sixteen* cows.—Those of the fourth *grade*—i.e. the *Grāvastut*, the *Nētṛ*, the *Potṛ* and the *Subrahmaṇyā*—receive a quarter of what is given to the principal ones; so that these get *twelve* cows.

These four classes of Priests have been clearly mentioned in the *Shruti*-text—'*Adhvaryurgṛhapatim, etc. etc.*'.

Further, *Manu* (8.208) raises the question—

[217] 'Where particular Fees have been prescribed for particular parts of the sacrifice, will the Fee specifically prescribed for that part be taken by that Priest? Or shall it be received by all?'

There are certain Fees specifically prescribed in connection with particular Priests; for example, in connection with the *Abhiṣāchanīya* Rite, it is laid down that 'one should give two golden lamp-posts to the *Adhvaryu*'. In connection with these special Fees, the question arises—Should these Fees be taken up by the particular Priests in connection with whose name they have been prescribed? Or are such particular Priests to be merely the channel for the gift, which is to be distributed among all?

The answer to this question has been provided by *Manu* himself (8.209)—

[218] 'At the Fire-installation, the *Adhvaryu* receives the chariot, and the *Brahman* the horse; and the *Hotṛ* receives the horse and the *Udgātṛ* the cart, at the Purchase (of *Soma*).'

Among persons belonging to a particular Vedic recension, at the Fire-installation, the *Adhvaryu* Priest receives the chariot; the *Brahman* Priest receives the swift horse; and the *Hotṛ* Priest receives the horse; and the *Udgātṛ* Priest receives the cart at the rite of the Soma-purchase.—Hence the conclusion is that the special Fee should be taken by the particular Priest for whom it is prescribed, not by any other Priest.

Say *Shaṅkha-Likhita*—

[219] 'After one Priest has been appointed, one may appoint another; the Fee belongs to the former alone; the one appointed later obtains something; if any Priest should go abroad, one should wait for him for some time till the time stipulated by him; and he should not carry on the performance during the interval; but if the Sacrificer is eager to finish the sacrifice, he may do so; and the Priest, on returning from abroad, should get something; in case he goes abroad even when forbidden, at the approach of the Extraction,—he should be fined a hundred;—or if the Priest be defective, then his Family-Preceptor who had initiated him should be fined. Similarly, if a Priest who is suffering from

a disease or is an outcast, or intoxicated, or defective or ruined, should happen to be appointed, through mistake,—when he is found out, the Sacrificer should propitiate the other Priests and having satisfied them, [with their consent, he should appoint another]. From among the Priests, if any one should abandon the Sacrificer who is not an outcast, he should be fined two hundred. The Sacrificer also should be fined the same amount, if he abandons a Priest who is not an outcast. He may freely dismiss a Priest who is an outcast or ignorant of the Veda; the Priest also may abandon a Sacrificer who is accused of a grave sin and is not generous.'

The meaning of this text is as follows:—(*a*) '*Atha, etc.*'—Among the Priests, when one has been appointed and has gone off, then alone should another be appointed; but the Fee shall be payable to the former; the latter is to receive something commensurate with the actual work done by him.—(*b*) '*Pravasēt*', etc.—If a Priest, on account of some business of his own, happen to go abroad, the Sacrificer should wait for him during that time; but if he fears a dereliction of duty on his own part, the Sacrificer may have the sacrifice finished with the help of another Priest; the Fee also is to be given to this other Priest; the former Priest, on return, may be given something.—(*c*) '*Atha chēt, etc.*'—Even when forbidden by the Sacrificer, if the Priest should go abroad at his own pleasure, then he should be fined 100 *Paṇas.*—(*d*) '*Sa ēva, etc.*'—If the Priest is at fault, then the person who had initiated him should be fined one hundred.—(*e*) '*Ēvam, etc.*'—If a Priest who is diseased, etc. has, through ignorance, been appointed,—when his defect is found out,—the Sacrificer should propitiate and satisfy the other Priests, and then, with their consent, should appoint another Priest.—(*f*) '*Kāmāt, etc.*'—If the Priest abandons a Sacrificer who does not deserve to be abandoned,—and if the Sacrificer dismisses a faultless Priest,—each of these should be fined 200 *Paṇas*; but there is nothing wrong in abandoning or dismissing a person found to be defective.

Says *Manu* (8.388)—

[220] 'If a Sacrificer forsakes an Officiating Priest,—and if an Officiating Priest forsakes a Sacrificer;—each being capable of doing his work, and free from disqualifications,—their punishment shall be 100 each.' *

In view of this the fine of 200 prescribed in the foregoing text should be understood to be meant for the case where the forsaking is wanton (without any reason), or where the offender is very wealthy.

Says *Nārada*—

[221] 'There are three kinds of Priests—(1) Hereditary, (2) Self-chosen, and (3) One who officiates, by chance, of his own accord, through friendship'—(3.10).

[222] 'Where an officiating Priest forsakes a Sacrificer who is faultless and has done no wrong,—or where a Sacrificer dismisses a faultless Priest,—they should both be punished'—(3.9).

[223] 'This rule applies to hereditary and to self-chosen Priests; there is nothing wrong in dismissing an accidental Priest'—(3.11).

'*Samyojya*' is the Priest employed.

* The *Arthashāstra* (3.15) prescribes the fine as 250 *Paṇas*.

Bṛhaspati—

[224] 'It is according to local custom that the loan and its recovery should be regulated.—That which has been lent by several persons jointly should be demanded also jointly. If any of the Creditors does not demand the debt, he loses the interest on it.—The Law of Debts has been given in detail before and is stated here only briefly.—Listen now to the rules relating to disputes among *cultivators* and others.—Tillage should be undertaken by a sensible man jointly with such men as are his equal in point of the possession of cattle, labourers, seeds and the like, as also the implements of husbandry—(14.18–21).—When, by the deficiency of one partner in regard to cattle and seeds, the cultivation of the field suffers loss, that loss should be made good by that partner, to all the cultivators.'

That is, when there has been loss due to the defective implements supplied by any one partner, that loss should be borne by that same partner.

Again—

[225] 'One who works up gold and base-metals, and yarns, wood, stone or leather, and is well-versed in the art is called an *Artisan* by the wise'—(*Bṛhaspati* 14.27).

[226] 'When these, goldsmiths and others, carry on their work jointly, they should receive their wages in accordance with the work done by each, in due proportion.'

'*Nirvesha*' is wages.

In regard to this same matter, *Kātyāyana* lays down some special rules—

[227] 'Among Artisans, there are four grades—(1) the man under training, (2) the trained man, (3) the expert, and (4) the master-artisan; these shall receive one, two, three and four parts respectively (of the proceeds of their joint work).'

This division is due to the relative superiority of the knowledge possessed by each.

Again *Bṛhaspati* (14.29)—

[228] 'Among a number of men working jointly over building a house, or temple, or digging a tank, or over making articles of leather,—the chief man is entitled to a double share * (of the profits).'

[229] 'The same rule has been declared by men learned in the Law to be applicable to dancers also. One who knows the keeping of Time receives a share and a half, while the singers receive equal shares'—(14.30).

'*Adhyardhā*'—is *a share with a half-share added to it;* this is what is received by the man versed in the art of keeping Time.

[230] 'When anything has been brought from another country, by thieves, under the orders of their leader,—they shall make over a sixth part of it to the King and divide the remainder among themselves, according

* The right reading is '*dvyamsha*' which is found in both MSS.; as also in *Smṛtichandrikā*, and by Jolly. The printed reading '*ardhāmsha*', 'half-share', has not been adopted in the translation.

to their due shares; the leader shall receive four shares, the bravest shall receive three shares, the most efficient shall receive two shares, and all the rest shall receive equal shares'—(*Bṛhaspati* 14.31-32).—

'*Mukhya*' is the leader, who exerts his mind and body;—*Shūra*', the most brave or audacious;—'*Samartha*', most powerful.

Says *Kātyāyana*—

[231] 'When something has been brought from another kingdom by thieves under the orders of their leader,—they shall set apart the tenth part of it for the King and divide the rest among themselves according to rule.'

In cases where the property has to be shown to the King, the *sixth* part shall be given to him; where, however, there is sufficient intimation by the leader and the whole of the property is not presented before the King, only the *tenth* part shall be given to him.

Similarly—

[232] 'When these men are actively engaged in their work, if some one is caught,—whatever is spent over having him set free should be equally divided among all.'

That is to say, whatever money is required for his acquittal should be given collectively by all associates.

Again—

[233] 'Among Tradesmen, Cultivators, Thieves and Artisans,—to the case of all these, where the exact nature of the work done by each cannot be always determined,—the same rules are applicable.'

CHAPTER V

Resumption of Gifts

Says *Nārada*—

[234] 'Having made an improper gift, if one wishes to resume it, it is called *Resumption of Gift*, which has been declared to be a Head of Dispute'—(4.1).

[235] '(1) What may be given, (2) what should not be given, (3) what has been (rightly) given (Valid Gift), (4) what has not been (rightly) given (Invalid Gift); these are the four points on which judicial proceedings proceed in regard to Gifts'—(4.2).

[236] '*What should not be given* is of eight kinds;—*what may be given* is of one kind;—*what has been rightly given* is of seven kinds;—and *what has not been rightly given* is of sixteen kinds'—(4.3).

The 'impropriety' of the gift (mentioned in Text 234 above) may be due either (*a*) to the giving of what should not be given, or (*b*) to giving it in an improper manner, or (*c*) to mistakes having been made regarding the recipient of the gift, or (*d*) to the absence of the consent of the Father and others, or (*e*) to the giver himself being too old or suffering from such disabilities.

As regards *what should not be given*, says *Bṛhaspati* (15.2)—

[237] '*What should not be given* has been declared to be of eight kinds: (1) Common Property, (2) Son, (3) Wife, (4) Pledge, (5) Entire Property, (6) Deposit, (7) What has been borrowed for a special occasion, and (8) What has been promised to another person.'

'*Sāmānya*', 'common property', is what belongs to several persons, of which there are several owners.

* Here as regards the *Common Property*, the *Son* and the *Wife*, the gift becomes invalidated, because the donor has no self-sufficient ownership over them; and this insufficiency of ownership is due—(1) to common equity, as regards *Common Property*,—(2) to direct declarations as regards unwilling *Son* and *Wife* (see Text No. 239 below);—(3) to direct declaration, as regards the *Entire Property*, of the man with offsprings,—also as regards the giving of what has been promised (see Text 238 below) †;—(4) to the fact

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* The printed text has omitted the following words after '*atra*':—'*sāmānya-putradāreṣvasvātantryād dānāsiddhiḥ, asvātantryañcha*',—which are found in the manuscripts.

† '*Common Property*'—according to *Smṛtichandrikā* (p. 442) this term stands for *Public Property*, such as roads, pathways, etc.—But *Vivādaratnākara* (p. 126) takes it as *what belongs to more than one owner*, i.e. Joint Property.—'*What has been promised*'—though mere promise is not enough to transfer the ownership, yet what has been promised to one should not be given to another,—says *Smṛtichandrikā*, p. 442.—'*Entire Property*'—the prohibition of the giving away of one's Entire Property refers to the person who has Sons and Grandsons living jointly with him; it is not applicable to a man who, either has no offsprings, or has already made over to his offsprings their share of the inheritance; such a person can give away his Entire Property—(*Smṛtichandrikā*)—(see notes on Text 175).—*Mitākṣarā* (p. 611) makes it clear that for making gifts out of the ancestral property, only the consent of the Sons is needed.

of the donor having no ownership over the Deposit and the Borrowed Article. As regards all the four—*Son*, *Wife*, *Entire Property* and *What has been promised*,—even though the donor has ownership over them, yet the gift becomes invalidated on account of the texts directly forbidding such gift.

In the opinion of the *Smṛtisāra* however, in the case of the Entire Property, the gift certainly remains valid because it has been made by the rightful owner; all that happens (in view of the prohibitive texts) is that the donor incurs the sin of doing something that has been forbidden.

And *Nārada* (4.4-5)—

[238] 'A Bailment for Delivery, an article borrowed for a special occasion, a Pledge, Common Property, Deposit, Son and Wife and the Entire Property when there is progeny,—and also what has been promised to another,—these the Teachers have declared to be what should not be given away, even under distressful circumstances.'

'Son and Wife' being expressed by a compound word are counted as one; hence the total number of 'what should not be given' (though actually *nine*, as enumerated here) may be regarded as *eight* only.

What is meant is that even in abnormal times of distress, (1) the *Son*, (2) the *Wife*, and (3) the *Entire Property* should not be given away,—without the consent of (1) the Son, (2) the Wife, and (3) the Progeny.*

That the said three may be given away with the consent of the said three has been thus declared by *Kātyāyana*—

[239] 'The *Son* and the *Wife*,—if they are unwilling—should not be sold or given away; so also the *Entire Property*; these the man shall retain with himself.'

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* The printed text omits the necessary word '*vimatau*' after '*nvayānām*'; it is supplied by the MSS.—What is meant is that—(1) The *Son* should not be given away without the consent of the *Son*, (2) the *Wife* should not be given away without the consent of the *Wife*, and (3) the *Entire Property* should not be given away without the consent of the *offsprings* (Sons and Grandsons). That such is the meaning is clear from what *Vāchaspati's* notes on the next Text No. 239.

According to *Smṛtichandrikā* (p. 443) what is meant by the assertion that 'the Deposit should not be given' is that it should not be given *except as a Deposit*; as declared by *Bṛhaspati* (5.5)—'What is held as a Pledge or Deposit can be given away only as a Pledge or Deposit'. It also adds that the prohibition regarding the Son refers to cases where there is only one Son.

The sole difficulty in this interpretation that is presented is the reading of the printed text and some MSS.—'*putradārādyanvayānām*' which lends itself to the interpretation that what is required is the consent 'of the *anvaya* consisting of the Son, the Wife and the rest'.—But that this cannot be what is meant is clear,—not only for the reasons given above,—but also from the fact that *Vivādachintāmaṇi* itself speaks later on of the 'consent of *these three*' which could not be right if '*anvaya* consisting of Son and Wife, etc.' were meant; as under that explanation there would be only one factor—'the *anvaya*, consisting of Son, Wife, etc.'—whose consent would be needed—not *three*. The right reading therefore must be '*putradārānvayānām*' as found in some palm-leaf manuscripts.

The whole matter is clinched by the following note from *Vivādaratnākara* (pp. 128-129)—(1) What is forbidden in one text (240) is the giving away of the Son and the Wife, even in times of distress; (2) so also is forbidden the giving away, even in times of distress, of the Entire Property, if there is *Anvaya* (Progeny); (3) while the other text (239) asserts is that in times of distress the Son and the Wife may be given away after obtaining the consent of these two,—and the Entire Property may be given away after obtaining the consent of the *Anvaya* (Progeny); and that there should be no giving away of the unwilling Son and Wife,—nor of the Entire Property, without the consent of the *Anvaya* (Progeny, Sons and Grandsons). Hence there is no inconsistency between these two texts (238 and 239).

[240] 'In times of distress however, the sale or gift of these may be effected; not otherwise (in normal times).'

That is, in the event of the said three (Son, Wife and Progeny) not consenting to the sale or gift,—they should be retained by the owner for his own purposes; and when their consent has been secured, then they can be given away.

Some people have held the view that the *Entire Property* should not be given away even on the consent of the *Progeny* (Sons and Grandsons); as the giving away of this has been forbidden on the ground of the mere presence of the 'Progeny' [and they would be there, even when giving their consent].

As regards the consent of the *Son* (to being given away or sold), *Vashiṣṭha* says—

[241] 'The human being, produced out of the semen and ovule, owes his existence to the Mother and Father; his Mother and Father are the sole masters regarding his being given away, sold or abandoned.'

In this same connection, with reference to an only Son, the same sage says—

[242] 'One should not give away, or receive in gift, an only Son; as he serves the purpose of perpetuating the race of the forefathers.—The woman shall not give away, or receive in gift, a Son, except with her husband's permission.'

That is, an only Son should never be given away, even though he be willing to be given away; such is the implication of the ratiocinative words 'as he serves the purpose of perpetuating the race, etc. etc.' * Even *with* the husband's permission, the woman is not entitled to receive the gift of [i.e. adopt] a son; because she is precluded from performing the *Vyāhṛti-homa*, which forms an integral part in the rites accompanying the giving and receiving of Sons.—Such is the upshot of the whole text of *Vashiṣṭha.*

The following might be urged—"The text has made the statement 'except with the husband's permission', without any other qualification; which means that when the husband's permission has been obtained, the woman becomes entitled to receive the Son just in the same way as to give him away; and on the basis of this it may be presumed that she is entitled also to the use of the (Vedic) learning necessary for the performance that forms an integral part of the ceremonies relating to the said *giving* and *receiving*".

True; the woman is so entitled, but only when accompanying her husband,—as in the case of sacrifices; and she is not entitled, alone by herself, to it; otherwise the injunction would be dependent upon the rejection (of the text forbidding Vedic study by women).

What may be given has been thus described by *Bṛhaspati* (15.3)—

[243] 'What is in excess of the provision for the feeding and clothing of the family may be given away. Otherwise the merit of the giver would have the effect of Poison tasting like Honey.'

Says *Yājñavalkya*—

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* This text has been misunderstood by an eminent Indian jurist; by which the Privy Council has been misled, in ruling that 'the adoption of an only Son is *not* illegal'. All authorities on Hindu Law are agreed that it is absolutely illegal.

[244] 'Only such things may be given away as do not injure one's own family, the *Wife* and the *Son* being always excepted; the *Entire Property* also should not be given away, if there is progeny; nor should one give away what has been promised to another person.'

And *Kātyāyana*—

[245] 'Barring the dwelling-house,* one's own Entire Property,—in excess of what is required for the maintenance of the family,—may be given away.'

That is, what is 'in excess', and what is one's 'own', should alone be given away; and the giving away of what is *not* 'in excess' would be sinful; while the giving away of what is 'in excess' would be meritorious.

What the assertion—'otherwise, the merit of the giver, etc.' (in Text 243) —means is,—not only that 'on account of the man not doing what is prescribed no merit accrues to him'—but that 'by doing what is forbidden, the man incurs sin also'. As regards the *giving* itself, that remains quite valid, if what has been given is the giver's *own* property. Because the basis of perceptible *ownership* is well known, and hence it cannot be set aside; consequently, the *giving* becomes invalidated only when the giver had no ownership over what he has given away.

The same rule applies to the case of Immoveable Property also,—according to the *Smṛtisāra*.

As regards the consent (of others), it is necessary only when the article given away is the Common Property of the persons concerned and the giver; not when it is not Common Property.

Says *Bṛhaspati*—

[246] 'Whether ancestral or self-acquired, a dwelling-house and lands are declared to be what may be given away,—out of what has been acquired through the seven sources of property'—(15.4).†

[247] 'Self-acquired property may be given away at one's own pleasure.‡ What is held as a Pledge can be given only as a Pledge'—(15.5).

[248] 'In the case of the marriage-gift and ancestral property, there should be no giving away of the whole.' §

'*The seven sources of property*',—i.e. the seven kinds of source of property—are the following, mentioned by *Manu* (10.115)—

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* According to *Vīramitrodaya* (p. 395), this exception is meant for cases where the man has only one house to live in.

† The reading in the printed text and in Ma and Mb is '*pradīyatē*', which has therefore been adopted in the translation. In other places this same text quoted contains the word '*prachīyatē*' in place of '*pradīyatē*'; with that reading, the further qualification becomes necessary—i.e. 'what is in excess'.

This rule applies to Immoveable Property—according to *Vīramitrodaya* (p. 394).

‡ '*At one's pleasure*'—even without the consent of Brothers and others—says *Vīramitrodaya* (p. 395).

§ 'Marriage-gift' includes also 'what has been acquired by valour'. What is meant by the prohibition herein contained is that the Entire Property cannot be given away without the consent of the Progeny; but with their consent, it could be given away—(*Vivādaratnākara*, p. 130).

What has been obtained at marriage shall not be given away without the Wife's consent; and no Ancestral Property shall be given away without the consent of the Son—(*Aparārka*, p. 780).

[249] 'There are seven lawful sources of property—(1) Inheritance, (2) Acquisition, (3) Purchase, (4) Conquest, (5) Investment, (6) Industry, and (7) Receiving of Proper Gifts.'

Of these (1) '*Dāya*', 'Inheritance', is what comes to one from his ancestors;—(2) '*Lābha*', 'Acquisition', is in the form of obtaining buried treasure and such things *;—(4) '*Jaya*', Conquest', through war;—(5) '*Prayoga*', 'Investment', is lending money on interest;—(6) '*Karmayoga*', 'Industry', is agriculture, trade and the like.†—All this has been mentioned only by way of illustration; as a matter of fact, anything that one has, in any way, made absolutely his own, may be given at his own pleasure; while what has been acquired in common with others may be given only on their consent; so also that *Ancestral Property* which is *undivided.*

[Says *Bṛhaspati* 15.6]—

[250] 'When (*a*) a Marriage-gift, (*b*) an Ancestral Property, (*c*) what has been won by valour is given away with the consent—(*a*) of the Wife, (*b*) of Kinsmen, and (*c*) of the Master,—then the gift acquires validity.'

'*Sandāyika*' here stands for that part of the Marriage-gift (Dowry) which has been given for the use of the Bride; when such a property is given away by the Husband, it needs the consent of the Wife; as then alone would the demands of equity be satisfied. No such consent can be needed in the case of such parts of the Dowry as have been given for the use of the man himself—such as Dresses and the like. If the text meant the necessity of consent in such cases also, it would be one laying down things for a transcendental purpose (common equity not demanding any such consent).—In the case of *Ancestral Property*—moveable as well as immoveable—which is *undivided*,—there would be need for the consent of the other coparceners.—Similarly in regard to what has been *acquired by valour*,—i.e. conveyances and other belongings of the enemy, which have been won as war-prize,—the consent of one's master is necessary for making a gift of it. Because it has been declared that all such prizes of war should go to the victorious King. But this does not apply to the case of Dresses and such belongings of the vanquished enemy; because these things have been declared to belong to the victorious individual himself.

Others have cited the following example—The defeated King had given horses and other things to his followers,—these things have been conquered by the army of the victorious King,—thereafter if the victorious King is giving away any of those things, it is necessary to secure the consent of the defeated King.‡

[Reverting to Text No. 247]—'*What is held as a Pledge can be given only as a Pledge*',—that is, a Pledge can be made over to the ownership of another person in the same character as it has been under the donor's own ownership. What is meant, therefore, is as follows:—A pledged property can be given away only in this form—'I am holding this property only as a Pledge,—I

* In addition to this *Medhātithi* suggests two other explanations of '*Lābha*'—(1) What has been inherited in common with other persons, and (2) Gifts from friends and from the father-in-law.—'*Jaya*' is *winning of law-suits*, according to *Nandana*, who also explains '*Prayoga*' as Teaching, and '*Karmayoga*' as Sacrificing for others.

† Of the seven 'Sources of Property',—*Inheritance, Acquisition, Purchase* are 'lawful' for all men; *Conquest* is lawful for the *Kṣattriya* only; *Investment* and *Industry* are lawful for the *Vaishya* only; and the *Acceptance of Proper Gifts* is lawful for the *Brāhmaṇa* only—says *Parāsharamādhava* (*Āchāra*, p. 309).

‡ The printed text contains here a passage after '*iti*', beginning with '*nyāyamūlā*' and ending with '*bṛhaspatiḥ*'. These six lines are not found in the MSS.; nor do they fit in with the context,—treating as it does of an entirely different subject. It has therefore been omitted in the translation.

am giving it to you,—you also keep it as a Pledge and restore it to the owner on realising from him the amount due on the Pledge'.

[In regard to 'Ancestral Property' mentioned in Text No. 250], there is the following text—

[251] 'Divided or undivided, all coparceners are equally entitled to the Immoveable Property; no single coparcener has the power to give away, pledge or sell it.'

What this means is that even in a case where the coparceners have been divided,—so long as their respective shares have not been allocated and assigned,—the property remains 'common' among them, and as such it continues to be 'Joint Property'; and hence no one has the power of giving, pledging and selling it. When, however, all the various articles constituting the Joint Property have been severally allocated and assigned to the individual coparceners,—each of them becomes the sole owner of his own share; and in regard to this, the transaction of his giving, pledging and selling of such share is perfectly valid.

Some people have taken the general term '*dāyāda*' 'coparcener', as standing primarily for the *Son*, and they explain the meaning to be that—so long as the Father is present, the Son, even though separated from him, has no power to dispose of the *Immoveable Property*; hence what the Son can give away is only what he has obtained through the seven 'Sources of Property', Acceptance of Gift and the like.*

What has been given away by a person who is the sole owner of the property,—can never be invalidated.

In connection with the afore-mentioned text (of *Yājñavalkya*, No. 244 above)—says *Hārīta*—

[252] 'By not giving what one has promised,—as also by taking away what has been given,—one goes to various hells and is also born as a lower animal.—What has been promised in word, but not fulfilled in action, constitutes a moral debt, in this world and in the next.'

And *Kātyāyana*—

[253] 'When one, of his own accord, has promised a gift to a *Brāhmaṇa*,—if he does not give it, he should be made to give it, just like a debt due, and should also undergo the Lowest Amercement.'

And the *Matsya-purāṇa*—

[254] 'If one does not give what he has promised, the King should fine him one *Suvarṇa*.'

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* According to *Smṛtichandrikā* (p. 447) this Text No. 251 refers to *Immoveable Property*; the sense being that—when even divided coparceners have equal claims what to say of those who are not divided?'—*Vivādaratnākara* (p. 131) remarks as follows:—Someone has asserted that this text is meant to apply only to *undivided* Immoveable Property. This, however, is not right. Because when the text uses the term 'divided', it cannot be taken as excluding the 'Immoveable Property' mentioned herein; because as regards *moveable* articles belonging to several persons, the incapacity of any one of them disposing of them has been already declared by *Bṛhaspati* in another text (No. 237 above), where 'Common Property' has been mentioned.—Another writer has held the view that under Text No. 246 above, what is meant by the term '*vivakṣitam*' is that the consent of coparceners should be secured; and that the Text No. 247 applies to property other than immoveable.—This is not right; because the term '*vivakṣitam*' cannot, in any way, indicate the necessity of securing the consent of other persons; because there is no reason for curtailing the scope of the text,—and because such an interpretation is against all usage.

An exception to this is laid down in *Gautama**—

[255] 'Even when one has promised a gift, one should not give it if the person is one beset with unrighteousness.'

The 'Unrighteousness' meant here is such as disqualifies the man from being a proper 'recipient' of gifts.

As regards 'Valid Gift' (what has been rightly given) [the third factor of the Chapter, enumerated under Text 235 above]—says *Bṛhaspati* (15.8)—

[256] '(1) Wages for work done, (2) Reward for satisfaction, (3) Price of commodity purchased, (4) Nuptial Fee, (5) What is given to a benefactor, (6) What is given through respect, (7) What is given through kindness, and (8) What is given through affection; these are the eight forms of *Valid Gift*.'

(1) '*Bhṛti*', *Wages*;—(2) 'Reward for satisfaction'—given to Actors and others;—(3) 'Price of commodity purchased'—paid to the Vendor; (4) Nuptial Fee—the fee for marriage, paid to the person who gives away the girl in marriage;—(5) 'What is given to a benefactor'—in gratitude, by way of recompense; (6) 'What is given through respect'—to deserving recipients; —(7) 'What is given through kindness'—to the Son and others;—(8) 'What is given through affection'—to Friends and others.†

If 'what is given through affection' is included in one of the preceding ones, then the number of *Valid Gifts* is *seven* only.

As regards the *Invalid Gift* (what is not rightly given), says *Nārada* (9.11)—

[257] 'The following gifts are *Invalid*:—(1) given under the influence of fear, (2) anger, (3) lust, (4) grief; (5) given by one suffering from disease; (5) given as bribe, (7) or in jest, (8) or by mistake, (9) or by fraud; (10) given by a minor, (11) or an idiot, (12) or one who is not his own master, (13) or one in distress, (14) or intoxicated, (15) or insane, (16) or an outcast; (17) what is given in expectation of some work in return.'

‡ The five kinds ending with 'suffering from disease' [i.e. Fear, Anger, Lust, Grief and Disease] should be understood to be of such high degree

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* The *Arthashāstra* (3.16) has the following exceptions:—(*a*) The Entire Property, the Son, the Wife and one's own self,—after giving away any of these, if the man repent of it, the gift may be returned to him.—(*b*) If a religious gift has been made to an undeserving person, it may be resumed.—(*c*) A friendly gift, if made to an evil-doer, may be resumed.

† 'Reward for satisfaction'—given to the conveyer of happy news—such as the birth of a son—according to *Aparārka*, p. 781.—'*Strīshulka*' is explained as 'present to one's wife' by *Aparārka* (p. 781).—'*What is given through kindness*'—charitable gifts to the poor and destitute, according to *Mayūkha* (p. 204); given for religious purposes—according to *Vivādaratnākara* (p. 133).—'*Valid*'—rightly given; hence never to be resumed—says *Smṛtichandrikā* (p. 449).

‡ '*Fear*'—*from the* person *to* whom the gift is made,—and the other conditions are meant to be so violent as to upset one's mind—(*Vivādaratnākara*, p. 135).—'*Vyatyāsa*' is *mistake*, as regards the article given or the recipient (*Vivādachintāmaṇi*, and *Vivādaratnākara*, p. 135),—regarding the article given (*Parāsharamādhava*, p. 223),—regarding the recipient (*Mayūkha*, p. 204).—According to *Vīramitrodaya* (p. 398 and also *Mitākṣarā*), '*Vyatyāsa*' may be taken as *exchange*.—*Fraud*—e.g. while really giving only a *hundred*, representing it to be a *thousand* (*Vīramitrodaya*,

as to deprive the man of the normal state of mind.—'*Bribe*'—is going to be defined by *Kātyāyana*.—'*Jest*'—joke.—'*Mistake*'—misconception, regarding the thing given or the recipient.—'*Fraud*'—i.e. negligence and the like.—'*Minor*' here stands for one who is unable to discriminate Right and Wrong.—'*Idiot*'—devoid of intelligence.—'*One who is not his own master*'—e.g. the Son, the Slave and such others.—'*Distress*'—is abnormal condition.—'*Intoxicated*'—through wine.—'*Insane*'—through the disorder of Wind (Nervousness).—'*Outcast*'—excommunicated by one's relations.—'*What is given in expectation of some return*'—i.e. given on certain conditions, and the conditions are not fulfilled *; [under all these circumstances the gift made is *invalid*].

Says *Kātyāyana*—

[258] 'One should resume the gift if it has been made under the influence of lust or anger,—or by one who is not his own master, or by one who is in distress, or is imbecile, or intoxicated or insane,—or made under a mistake or in jest.'

[259] 'If a bribe has been promised as to be paid on the accomplishment of some work,—that should never be given, even if that work is accomplished. In case the bribe had already been given beforehand,—the recipient should be compelled to refund it; and he should be fined eleven times that amount; so have declared *Gārgēya* and *Gālava*.'

But if the gift has been made by the man in distress with a religious motive,—that remains *valid*; according to the following declaration by *Kātyāyana*—

[260] 'When a man, either in the normal condition or in distress, has proclaimed a gift, with a religious motive,—if he dies without making that gift, his son should certainly be made to make it.'

The 'Bribe' that, by its very nature, is one that must be returned,—has been thus defined by *Kātyāyana*—

[261] 'What is obtained (*a*) by indicating the thief, the criminal, the misbehaved and the adulterer,—or (*b*) by exposing the man who has lost his character,—or (*c*) by instigating lies,—is called *Bribe*. In such cases the giver is not to be punished, it is the middle-man who is at fault.'

That is, (*a*) the money that is given by the leader of thieves and other criminals to persons for showing these latter, and (*b*) what is given to the person who has instigated witnesses and others to tell lies,—is called 'Bribe'. This has to be refunded, even when the work for which it had been given

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p. 398); or knowing that a cow is going to be given to *A*, *B* disguises himself as *A* and receives the gift (*Mayūkha*, p. 204).—'*Mūḍha*'—illiterate; ignorant of the Veda and of worldly experience (*Vīramitrodaya*, p. 398);—bewildered in regard to the recipient (*Smṛtichandrikā*, p. 451); one who, by his very nature, is unable to discriminate between right and wrong (*Vivādaratnākara*, p. 135).—'*Bāla*'—Minor, under sixteen years of age (*Mitākṣarā*, and *Parāsharamādhava*, p. 228); one, not necessarily a minor, who is unable to understand what should and what should not be done.—'*Ārta*', one in distress; when, for instance, a man is being carried away by a swift stream, who cries out 'I shall give a hundred gold-pieces to anyone who saves me'—(*Asahāya*).

* The printed edition is wrongly punctuated. The word '*pādhyasiddhau*' goes with the previous line, after '*sopādhidattam*'. The MSS. punctuate the sentence rightly.

has been accomplished.—'*Middle-man*'—the man who actually receives the bribe.

As regards what has been given under the influence of Lust, Anger, etc.,—this has been dealt with under the section of 'Payment of Debts'—(see *Texts* Nos. 99 and 101 above).

Bṛhaspati (15.9) [describes the Invalid Gift thus]—

[262] 'What has been given—(*a*) by one angry, or (*b*) by one overjoyed,* or (*c*) through inadvertence, or (*d*) by one distressed, or (*e*) by a minor, or (*f*) by one who is insane, or (*g*) terrified, or (*h*) intoxicated, or (*i*) too old, or (*j*) an outcast, or (*k*) an idiot, or (*l*) afflicted with grief, or (*m*) diseased, or (*n*) what is given in jest;—all such gifts are *invalid* (void).'

What is meant by all this is that what has been given for religious and other such purposes is always valid.

'*Too old*'—one whose bodily organs have become disabled.

Bṛhaspati goes on—

[263] 'What has been given in expectation of some return, or what has been given to an unworthy recipient under the impression that he is worthy, or what has been given for an immoral purpose,—all this the owner (donor) may resume.'

'*Given in jest*' (in Text No. 262) is what is given in play.

Similarly, in other cases also, when the gift made of a certain kind (for a certain purpose) does not turn out to be of that kind,—the donor shall resume it by force; as says *Manu* (8.212-213)—

[264] 'When one has given money for a pious purpose to a person asking for it,—if, subsequently, it is not used for that purpose, then, it should not be given to him.—If, through arrogance or greed, the donee should seek to recover the gift, he should be made by the King to pay one *Suvarṇa*, as an expiation for that act of theft.' †

* This second term as read in all the available texts (printed and MSS.) is '*hṛṣṭa*', which means 'overjoyed', one who has lost the balance of his mind through excessive joy. The *Smṛtichandrikā* (p. 453) reads '*bhraṣṭa*', 'fallen'; but this would be nearly the same as 'outcast'. *Vivādaratnākara* (p. 136) reads '*kruṣṭa*', which is the form also found in a text of Gautama's in the same connection; this is the form that appears to have been adopted by Jolly, who translates it as 'one resenting an injury'. This, however, would be not much different from 'angry'.

† Says *Medhātithi*—When the money has been already given, there can be no sense in saying that 'it should not be given'; hence the words should be taken to mean that 'it shall be taken back from him';—or in the former clause itself, 'given' may be taken in the sense of *promised*; the meaning being that 'what has been promised should not be given'. In the former case also, the gift being for a definite purpose is only contingent on the fulfilment of that purpose,—hence if that purpose is not fulfilled, what was given should be taken back.—'*Seek to recover it*'—by filing a suit before the King.—'*Act of theft*',—this might give rise to the idea that the man is to suffer the penalties of regular *theft*; hence the text has specified the penalty as a fine of *one Suvarṇa* (Gold Coin); the meaning being that, though his punishment is to be only this, yet in all respects, he is to be treated as a *thief*.

Vivādaratnākara (p. 137) explains the meaning to be—'If the man has begged for the money for the purpose of performing a pious act,—but having got it, he does not perform it,—then the gift shall be recovered from him'.

Nandana provides an entirely different explanation of the second text—'If the man should really perform the pious act for which he had asked for the money, then the man who had promised to pay, but did not pay,—or having paid, took it back,—should be made to pay a fine of one *Suvarṇa* for not fulfilling his promise'.

'*Seek to recover*',—by asserting—'You gave me this; I am not going to give it back',—or 'Please pay up what you have agreed to pay'.

Says *Nārada*—

[265] 'He who accepts what is *not rightly given* (an invalid gift), and he who gives *what should not be given* (an invalid gift),—both of these should be punished by the King conversant with the Law.' *

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* The further implication of this is that in such cases the King shall have the gift returned—(*Smṛtichandrikā*, p. 444).

CHAPTER VI

Law relating to Servants

SECTION (A)—KINDS OF SERVANT

Says *Bṛhaspati* (16.1)—

[266] '*What should not be given* and other matters have been explained: The Law relating to Servants is going to be expounded now. (A) This Head of Dispute is, at first, explained in relation to cases where service has been promised.'

Thus the first section of this Head of Dispute deals with the case where the Servant has agreed to serve and then refuses to serve.

[267] '(B) *Non-payment of Wages* and (C) the consequent dispute between the *Owner and Keeper* (Employer and Employee) follow in due order.—These are the three sections of the Law relating to Servants'—(*Bṛhaspati* 16.2).

Who is a 'Servant' and of how many kinds is thus explained by *Nārada* (5.2)—

[268] 'The *Servant* has been known by the wise to be of five kinds; four of these are *Labourers* and the fifth is the *Slave*, of whom there are fifteen kinds.' (*Vide* Text No. 285 below.)

Four kinds of *Labourers* along with the *Slave* are 'Servants'.
How there are four kinds of *Labourers* has been thus explained by *Nārada*—

[269] '(1) The Pupil, (2) the Apprentice, (3) the Hireling, and (4) the Manager—these are *Labourers*; and (5) *Slaves* are those *Born in the House* and the rest. The characteristic common to all these has been declared to be that they are not their own master.' *

Bṛhaspati (16.5) has explained the four kinds (of Servants) in the following manner:—

[270] '*Servants* are of four kinds—according as they serve for knowledge, for skill, for lust, or for gain.—*Knowledge* has been described as consisting of the Three Vedas—*Ṛk*, *Yajuṣ* and *Sāman*;—for the purpose of acquiring this *knowledge*, one should have recourse to the service of the Teacher as laid down in the Scriptures. [One who does this is the *Pupil*.]'

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* The first four are called 'Labourers'. The distinction between the 'Servant' and the 'Slave' is thus explained in *Vīramitrodaya* (p. 405):—When the man surrenders himself absolutely and entirely to the service of his Master, he is a 'Slave',—when he simply undertakes to serve the Master, without surrendering himself entirely, he is a 'Servant'.

Says *Nārada* (5.8)—

[271] 'Till he has acquired knowledge, the *Pupil* should serve the Teacher diligently; he should behave similarly towards the Teacher's wife and also his son.'

With regard to the second kind of *service* (for skill)—says *Bṛhaspati* (16.6)—

[272] '*Skill* is described as *art and craft*—such as working in gold and other metals; dancing and the rest; while learning all this, one should serve in the Teacher's household.'

It is this kind of learner seeking skill in arts and crafts whom *Nārada* has called '*antēvāsin*', 'Apprentice', in the following text—

[273] 'If one wishes to acquire his own art or craft, he should, with the sanction of his relatives, go and live with a Master; the exact period of apprenticeship having been previously settled '—(*Bṛhaspati* 5.16).

[274] 'The Master should teach him in his own house and should feed him; he should not make him do any other work; he should treat him like a son '—(5.17).

He goes on—

[275] 'If the Apprentice forsake the Master who is instructing him properly and who is faultless, he should be compelled to remain with him and should suffer corporeal punishment and confinement '—(5.18).

[276] 'Even if his course of instruction be completed before time, the Apprentice should remain with the Master till the expiry of the stipulated time. Whatever work he may do during that time, the produce thereof shall belong to the Master.'

'*Vadha*' (in Text 275, which literally means *death*) stands for mere *beating*; and '*bandha*' for *tying up*.

'*Stipulated time*'—what is meant is that even on the completion of his course of instruction the Apprentice should fulfil the stipulation made to the Master at the outset to the effect that 'I shall work for you for such and such a time'.—'*The produce thereof* '—in the shape of wages and other things earned by the Apprentice.

He goes on—

[277] 'After having acquired his craft, in the stipulated time, the Apprentice should reverentially go round the Master; and having propitiated him to the best of his power and obtained his permission, he should return to his home '—(5.20).

In reference to the *third* and *fourth* kinds of 'service' [i.e. the Hireling who serves for the sake of Lust and *Gain*—mentioned in Text 270 above], says *Bṛhaspati*—

[278] '[Among Hirelings] there is (*a*) one *supported by the woman*; it is he who marries a Slave-girl who works for her Master,—just like another man who *works for food*.'

[279] (*b*) 'The Hireling (working for wages) is of several kinds; so also one who is *supported by* (*works for*) *sharing in the produce*; he does the work that he has undertaken and receives the stipulated share.' *

For '*bhogabhṛtaḥ*', the *Ratnākara* reads '*bhāgabhṛtaḥ*'.

[280] 'One who is supported by sharing in the produce is of two kinds,—consisting of cultivators and cattle-tenders; the former receiving a share of the agricultural produce, and the latter a share of the milk.'

The *man supported by sharing* also being one who *works for wages* (of some kind),—the *Hireling* comes to be of *four kinds* (as declared in Texts 268 and 270 above).—*Nārada* has spoken of the *worker for share* as the third kind of *Hireling*.

Of the *Hirelings*, *Nārada* states another classification—

[281] 'The Hireling is of three kinds—(1) Highest, (2) Middle, and (3) Lowest. Their wage is fixed according to the work done, and the degree of skill and devotion displayed. The Warrior constitutes the Highest Class; the Cultivator constitutes the Middle Class; and Carriers represent the Lowest Class;—thus the Hireling belongs to these three kinds.' †

[282] 'The *Manager* is one who has been appointed to manage the properties of the Master and to superintend his household. He is also called the *Controller of the Household*.'

Bṛhaspati has included this Manager also under the class 'Hireling', while *Nārada* has treated them as General and Special categories.‡

What is the nature of the duties of these has been thus described by *Bṛhaspati*—

[283] 'These four have been declared to be those who do high-class work';

'*These four*'—i.e. the Pupil, the Apprentice, the Hireling and the Manager;—

'the rest, consisting of the fifteen kinds of *Slaves*, do work that is of the *low* kind.'

[284] '*Work* is of two kinds—*High* and *Low*; the Low work has been declared to be the work of Slaves; and High work is the work of Hirelings. Such work, for instance, as sweeping of the gateway, of the privy, of the road, and of the dumping ground; shampooing the secret parts of the body; removing of food-leavings, of ordure and of urine; and the rubbing of the Master's limbs;—these constitute the "low class" of work. All the rest belong to the "high class".

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* This text has been variously read: (*a*) For '*vaḍavābhṛtaḥ*', some books read '*vanitābhṛtaḥ*'; this makes no difference in the meaning;—(*b*) for '*annabhṛto*' in the printed text, Ma and Mb read '*bhṛtako*'; the meaning in this case being 'just like the other Hireling working for wages';—(*c*) for '*bhogabhṛtaḥ*' another reading, also noted by *Vāchaspati*, is '*bhāgabhṛtaḥ*'; here also there is not much difference in the real purport.

† *Vivādachintāmaṇi* has '*ityēṣa trvidho bhṛtaḥ*' in place of '*tathā cha gṛhakarmakṛt*' as found elsewhere.

‡ According to *Vivādaratnākara* (p. 143) there are two distinct persons mentioned—(1) the Manager of Properties, and (2) the Controller of the Household.

[With regard to Slaves] says *Nārada* (5.26–28)—

[285] 'Slaves have been declared to be of fifteen kinds:—(1) Born in the Master's house, (2) Bought, (3) Received in gift, (4) Hereditary, (5) Maintained during famine, (6) Received in mortgage, from the Master, (7) Enslaved by being freed from a heavy debt, (8) Captured in battle, (9) Won through a wager, (10) One who has surrendered himself, saying 'I am thine', (11) An Apostate from Renunciation, (12) Enslaved for a stipulated period, (13) Enslaved for food, (14) Enslaved through connection with a Slave-girl, and (15) One who has sold himself.'

'*Dāyādupāgataḥ*'—one who has been a Slave through several generations, hereditary.—'*Anākālabhṛtaḥ*'—supported during famine.—'*Mokṣitaḥ*'—one has agreed to become a Slave on being freed from debt.—'*Kṛtaḥ*'—one who has entered into an agreement that 'I shall be your Slave for such and such a time'.—'*Bhaktadāsaḥ*'—one who has agreed to become a Slave for the sake of food (maintenance) even during times of plenty.

Says *Nārada* (in regard to No. 11 above)—

[286] 'The man who has become an Apostate from Renunciation would be the Slave of the King himself; for him there is no emancipation, nor expiation of any kind.'

But *Kātyāyana*—

[287] 'Of the three twice-born castes who become Apostates from Renunciation,—the *Brāhmaṇa* should be banished, the *Kṣattriya* and the *Vaishya* he shall enslave.'

The word '*kṣatravit*' is a copulative compound.

And *Dakṣa*—

[288] 'Having taken to renunciation, if the man does not remain firm in his duties—the King shall brand him with the dog's foot and banish him immediately.'

As to which kind of Slave can be emancipated in what way, or under what circumstances there can be no emancipation at all,—says *Nārada*—

[289] 'Of these, the group consisting of the first four can never be emancipated from slavery, except through the favour of the Master; slavery sticks to them for generations.'

The four—i.e. the Slave born in the Master's house, the Bought, the one received in gift, and the Hereditary.—In fact it is only to these four that the name 'Slave' is directly applicable, in its primary sense; to the others, it is applied only indirectly, on the basis of the common character of *not being one's own master*. Hence where the woman is spoken of as 'married by a *Slave*' (as in Text 307 below), the term 'Slave' is taken as standing for the said four kinds.

Again—

[290] 'The wretched man who, being his own master, sells himself, is the meanest of these all; and he also is never emancipated from slavery.'

'*His own master*'—i.e. not the Slave of any person.

The exception (in Text 289)—'except from the Master's favour'—is applicable to this also.

What is asserted in the following text—

[291] 'Even though the *Shūdra* may be given up by his Master, he does not become emancipated from slavery; as slavery is inborn in him; who then can remove that from him?'—

occurring in the *Mārkaṇḍēya Purāṇa*, representing the words of *Harishchandra*, —is only meant to deprecate the *Slave* [and is not meant to be literally true]. If it were not so, and if slavery were inborn in the *Shūdra*, there could be no such dealings as the selling of *Shūdras* and so forth.

[As regards the emancipation of the other kinds of Slaves] *Nārada* goes on—

[292] 'If the man who is not his own master should surrender himself to someone saying *I am thine*,—this latter man cannot take him as his Slave; he shall be taken by his former Master.'

That is, the man does not become the Slave at all of the second man.

[293] 'Persons stolen and sold, or those who have been enslaved by force,—should be forthwith set free by the King; as their slavery is not held to be legal.'

[294] 'From among these (Slaves), if any one happen to save his Master's life, he should be emancipated from slavery and should receive a son's share in his property.'

'*Ēsām*'—i.e. from among these.

[295] 'The Slave who has been maintained during famine becomes emancipated by giving a pair of oxen, as also whatever has been eaten during the hard times; by so doing * he becomes free.'

That is, by giving to the Master what he has consumed during the famine, and also a pair of oxen,—he becomes emancipated.

[296] 'The Slave who had been *received in mortgage* becomes emancipated by paying money to the previous Master if he agrees to redeem him';—

—'*ahita*' is pledged, mortgaged;—

'if however, the previous Master makes him over to the mortgagee himself, then he becomes the same as the '*Bought* Slave'.

That is, if the Slave is made over to the man to whom he had been mortgaged,—and is not emancipated by him,—then he becomes as good as the 'Bought' Slave of this mortgagee. Such is the explanation of this text provided by *Lakṣmīdhara* and others.

[297] 'The Debtor (Slave) becomes emancipated by paying the debt with accrued interest.'

It has been laid down that 'the Creditor may make the Debtor do work for him, in liquidation of his debt'; it is in accordance with this dictum that the Slave is spoken of here as 'Debtor'.

[298] 'On the lapse of the stipulated period, the *man enslaved for a stipulated period* becomes emancipated.'

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* The right reading is '*tena*' as in MSS.—not '*ta nna*' as printed.

That is, if a man has contracted a debt, and has stipulated that during the time that the debt remains unpaid, he would remain a *Slave*, he is what has been called 'a Slave for a stipulated period'; when the debt has been cleared off by the work done for the Master, and the stipulated period has elapsed,—the man becomes emancipated.

[299] '*The Slave who has surrendered himself, saying* "*I am thine*",—the *Slave captured in battle*,—and *the Slave won through a wager*,—become emancipated, on giving substitutes whose capacity for work is equal to their own';

that is, by offering another Slave in his own place.

[300] 'The man who has been *enslaved for food* becomes free immediately on giving up the said subsistence. And the *man who has been enslaved through his connection with a Slave-girl* becomes emancipated by abandoning her.'

'*Vaḍavā*' is Slave-girl;—here '*nīgraha*' is renouncing or abandoning her;—after which the liability of the man to perform the duties of the husband of the girl ceases. And the man who has become a Slave for the sake of obtaining food,—he also becomes emancipated by giving up that means of subsistence.

Says *Kātyāyana*—

[301] 'If a man has intercourse with his Slave-girl and she gives birth to a child,—then, in view of the *seed*, she should be emancipated, along with her progeny.'

According to the *Prakāsha*, the *Ratnākara* and the *Pārijāta* however, it is only when the man has no other son that the Slave-girl along with her child shall be emancipated; and not when he has other sons.*

In a case where the Slave has to be emancipated entirely through the favour of his Master,—the procedure has been laid down by *Nārada* (5.42-44)—

[302] 'When, being pleased with the Slave, one wishes to emancipate him from slavery, he should take from the Slave's shoulder a jar full of water and smash it on the ground; he shall sprinkle the Slave's head with water containing rice and flower; and having declared him to be a 'free man' three times, he should send him away towards the East. Thenceforth he should be spoken of as one cherished by the favour of his Master; and henceforward he becomes one whose food may be eaten and whose gifts may be accepted; and he is respected by all good men.'

[303] 'These three—the Wife, the Slave and the Son—have no property of their own; whatever they acquire belongs to him to whom they themselves belong.'—(*Manu.*)

Says *Dēvala*—

[304] 'When the father is dead, then may the sons divide among themselves the property of the father; as while the blameless father is alive, the

* *Mayūkha* (p. 210) remarks that this is to be done only if the child born is found to be endowed with exceptionally good qualities.

Says *Arthashāstra* (3.13)—'If such an emancipated girl turn out to be an expert housewife devoted to the interests of the family,—her mother, brother, and sister also shall be freed from bondage'.

sons have no rights of property;—while the husband is alive, women have no rights over any property; so also while the Master is alive, the Slave has no rights over any property—this has been declared by *Manu*.'

[305] 'The *Brāhmaṇa* may quite confidently take what belongs to the *Shūdra*; as the *Shūdra* has no property at all; whatever he has is liable to be taken away by his Master.'

Also *Kātyāyana*—

[306] 'Whatever property the Slave may have—of that, his Master has been declared to be the owner. But the Master shall not take what the Slave has acquired either through the Master's kindness or by selling himself.'

That is, whatever may have been obtained by the Slave through his Master's favour, and by his own sale,—to that property of the Slave, his Master is not entitled.*

[307] 'If a girl who is not a Slave is married by a Slave, she also becomes a Slave; because her husband is her Master, and this Master is the Slave of his own Master.'

Here the term 'not a Slave' must be taken as related to that correlative (Master) who is indicated by the term 'Slave' [i.e. as meaning that the girl in question (Bride) is not the *Slave of the person to whom the Slave* (*Bridegroom*) *belongs*]; this interpretation being in accordance with the '*Padi-nyāya*' [the *Maxim of the Foot*, by virtue of which whenever there is mention of the 'foot', it must mean the foot of some person, and this person must be the one who happens to be indicated by the context; in the same manner, when the text uses the term 'not-a-Slave', it must be 'not a Slave' of the person indicated in the context; and this person happens to be the one to whom the Bridegroom belongs].—Hence what the text means is that—'the girl may be either *not a Slave at all*, or she may be the Slave of someone other than the Bridegroom's Master,—in either case, when married to the said Slave, she becomes the Slave of the Bridegroom's Master'.

The implication of this is that *being married to a Slave* is one of the grounds of the girl's emancipation from her bondage to her own previous Master. This is the reason why this text occurs in the present context.

It is only when the act is performed by the Slave with the Master's consent that it becomes valid. Hence in a case where the Master has not given his consent, the ownership of the previous owner does not cease; this case being regarded as analogous to that of the marriage of the ordinary Slave-girl.

Section (B)—Rules relating to Slavery

Says *Nārada* (5.40)—

[308] 'Among the several castes, there can be no slavery in the inverse order; except in the case of the man who has violated his own duties.

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* *Vivādaratnākara* (p. 150) reads the second line of this text as—'*Prakāsham vikrayād yat-tu na svāmī dhanamarhati*', and explains it as follows:—'What the Master has openly sold to the Slave,—or what was given to him as his own price when he was sold,—and what the Master has given to the Slave through favour,—in such property of the Slave, the Master has no right'. It says that this is the meaning of the text as read by *Prakāsha, Kāmadhēnu, Pārijāta* and the rest.

Slavery (in respect to the castes) has been held to be analogous to the condition of the "wife".'

That is, a person of the higher caste cannot be the slave of one belonging to a lower caste; just as the girl of a higher caste cannot be the wife of one belonging to a lower caste. But in the case of the person who has violated the duties of his own caste and life-stage, slavery (to a lower caste) is permissible.

Says *Kātyāyana*—

[309] 'Among the three higher castes, the *Brāhmaṇa* shall never be a slave.—A *Brāhmaṇa* shall never make a slave of a man of his own caste;—if he is a man endowed with superior character and learning then he can make an inferior *Brāhmaṇa* do his work; but the *Brāhmaṇa* shall do no mean work.—If the *Brāhmaṇa* is made a slave, the glory of the King suffers diminution.—The *Kṣattriya*, the *Vaishya* and the *Shūdra* may make a man of equal caste work as his slave,—but never a *Brāhmaṇa*; so says *Bṛhaspati*.'

That is, if a man is possessed of high qualifications, he can take work out of one who has no qualifications; a man with superior qualifications may take work from one with inferior qualifications; but here also he shall not make him do such dirty work as the cleaning of ordure, urine and so forth.

Says *Manu* (8.411)—

[310] 'If a *Kṣattriya* or a *Vaishya* happen to be in want of livelihood, the *Brāhmaṇa* shall support him ungrudgingly and make him do his own work.'

'*Own work*'—i.e. work compatible with the caste of the poor man.*

[311] 'If a *Brāhmaṇa*, on the strength of his being the Master, makes sanctified twice-born persons do servile work, against their will,—he shall be made by the King to pay six hundred'—(*Manu* 8.412).

'*Servile work*'—i.e. such work as is fit for the *Shūdra*, but unfit for the Twice-born.†

[312] 'A *Shūdra*, bought or unbought,—one shall make to do servile work; since it was for doing servile work that he has been created by the Self-born One.—Even though set free by the Master, the *Shūdra* is not released from servitude; since that is innate in him, and who can release him from it?' ‡

'*Servitude*'—i.e. servile work.

Says *Viṣṇu* (5.151)—

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* *Medhātithi* explains this as—'the *Brāhmaṇa's* own work; such as *fetching* water, fuel and such things; but not such work as personal attendance, washing of unclean things and the like'.

† According to *Medhātithi* this refers to *Brāhmaṇas*, not to all twice-born castes; the meaning being that, if a *Brāhmaṇa* makes his fellow-castemen do such servile work as the washing of feet, removal of offal, sweeping and so forth, he shall be fined 600, if he does it through greed; if he does it through malice, the fine shall be heavier.—'*Six Hundred*'—*Paṇas* (says *Aparārka*, p. 789).

‡ All this is purely declamatory, mere *Arthavāda*, not to be taken as literally true; as it is going to be declared by *Manu* himself that under certain conditions, the *Shūdra* does become released from servitude—*Medhātithi*.

[313] 'One who makes a slave of a member of the highest caste shall be fined the highest amercement'.

'*Highest caste*'—*Brāhmaṇa*.—'*Highest amercement*'—i.e. 1,000 *Paṇas*.
And *Kātyāyana*—

[314] 'If one buys or sells a *Brāhmaṇa* woman, the King should annul the sale and punish all the parties concerned.'

[315] 'When a woman of a respectable family comes to a man of her own accord,—if he makes her a slave or transfers her to another person, he should be punished and the transaction should be annulled.'

That is, when a well-born lady comes to a man of her own accord,—if he makes her a slave or hands her over to someone else, he should be fined.

[316] 'If a man enjoys, as his slave, either his child's nurse or his servant's wife who is not his slave,—he should suffer the first amercement.'

[317] 'If, in normal circumstances, a capable man sells a slave girl *who is devoted to him* (or, under another reading, *whom he has enjoyed*), and is loudly lamenting,—he should be fined 200.'

'*Bāladhātrī*', '*Child's Nurse*',—the woman who, even though a slave, is acting as the wet-nurse of his child.—'*Adāsī*', '*who is not his slave*',—i.e. who has only come to seek shelter under him.—'*Loudly lamenting*'—not consenting to her sale.—'*First amercement*'—i.e. a fine of 250 *Paṇas*.
[For notes on Slavery, from *Arthashāstra*, see Hindu Law in its Sources, Vol. I, page 290.]

SECTION (C)—NON-PAYMENT OF WAGES

[318] 'The Master of a work shall pay the stipulated wages to the Hireling, at the commencement, at the middle and at the completion of the work,* as determined.'

[319] 'If the amount of wages has not been previously settled (*a*) the trader, (*b*) the cowherd, and (*c*) the cultivator (servant) shall receive the tenth part of (*a*) the profit, (*b*) the cow-produce, and (*c*) the grains (respectively).'

'*Profit*'—that has accrued from the business in which the trader has helped.—'Cow-produce'—milk.
Says *Yājñavalkya* (2.196)—

[320] 'Each man shall receive the wages in accordance with the work done by him.'†

And *Bṛhaspati* (6.12-13)—

[321] 'The Ploughman shall receive the *third* or *fifth* part (of the produce of the land ploughed): If the Ploughman is receiving food and clothing, he shall receive the *fifth* part; while, if he is dependent entirely upon a definite understanding, he shall receive the *third* part of the produce.'

* In the proportion of 5 at commencement, 7 in the middle and 28 on completion, according to *Pārijāta*,—says *Vivādaratnākara* (p. 156).

† The exact amount payable being determined by an arbitrator,—says *Mitākṣarā*.

'*Upadhā*' is understanding, agreement to some such effect as that—'Whatever shall be the produce of this land, the *third* part of that shall be given to you, and no food or clothing'; the servant engaged on such an understanding is called 'one who is dependent upon an understanding'; and such a labourer is to receive the *third* part of the produce. But if he is given food and clothing, then he is to receive only the *fifth* part of the produce.

What *Nārada* (in Text 319 above) has said regarding the receiving of the *tenth* part,—that refers to workers other than the Ploughman.

Says *Āpastamba*—

[322] 'If the Ploughman runs away, and the work of the Employer suffers in consequence, he should be beaten with sticks. Similarly in the case of the Cattle-keeper running away; and in this latter case, his cattle also should be impounded.'

Of the, '*Udvasataḥ*'—running away—'*Kīnāsha*'—Ploughman—there should be beating with the stick. Similarly if the Cattle-keeper runs away; and in this case there should be the additional punishment in the form of the impounding of his cattle.

Says *Vṛddha-Manu*—

[323] 'Where no wages have been stipulated previously, the Labourer shall receive the wages fixed by persons expert in sea-voyage and experienced in regard to time and place.' *

'*Expert in sea-voyage*'—i.e. well-versed in the matter of the wages due to traders. (*Trade in general*, according to *Vivādaratnākara*, p. 158.)

Bṛhaspati (16.15)—

[324] 'If, after having received the wages, the Employee fails to do the work, though quite fit to do it,—he shall be made to pay twice as much as his wages, as fine, to the King, and refund the wages to the Employer.'

The construction is '*Samarthaḥ san karma na karoti*' ('Being quite able, if he does not do the work').

[325] 'Having received the wages, if the Labourer abandons the work, he should pay double the amount of the wages; if he has received no wages, he should pay (as fine) an amount equal to his wages. The Labourers have also got to take care of the implements.'

That is, in the event of the Employee abandoning the work undertaken,—if he has received the wages, he should pay the double of what he has received,—if he has not received the wages, he should pay the same amount as the wages.—'*Bhṛta*' stands for the Ploughman and such employees.—*Implements*'—such as the Rope and other appertenances of a Plough and other things.

Says *Nārada* (6.5)—

[326] 'After having promised to do some work, if the Labourer fails to do it, he should be compelled to do the work and receive the wages.'

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* Says the *Arthashāstra* (3.13)—Where no wages have been previously settled, the Labourer shall be paid in accordance with the work done and the exigencies of time; the agricultural Labourer receiving the tenth part of the crops,—the cowherd, the tenth part of the butter,—the Tradesman-Labourer, the tenth part of the merchandise dealt with by him.

And *Vṛddha-Manu*—

[327] 'If he does not do the work, he should be fined 200.'

This refers to the man who has begun the work and then given it up. With regard to the man who does not start the work at all, *Manu* says (8.215)—

[328] 'If a Hireling, without being ill, does not perform the stipulated work, through arrogance,—he should be fined Eight *Kṛṣṇalas*, and should also have no wages paid to him.'

[329] 'When a man, sick or well, does not get the stipulated work done, he shall not receive his wages,—even though the work be only slightly incomplete'—(*Manu* 8.217).

[330] 'If the Employee who had been ill, on recovering, completes the work as originally stipulated, he shall receive his wages,—even though it be after the lapse of a long time'—(*Manu* 8.216).

'*Slightly incomplete*' (Text 329)—i.e. of which a small portion remains to be done.—[Text 328].—If the man who has been ill, and has consequently given up the work,—returns, on recovery and completes the work,—even if he does so after a long time,—he receives his wages.

Says *Nārada*—

[331] 'If a Hireling abandons his work before the lapse of the stipulated time, he forfeits his wages.—But if he leaves it through some fault of the Employer, then he should be paid for such portion of the work as he may have already done.' *

Viṣṇu (5.153-157)—

[332] 'A Hireling who abandons his work before the expiry of his term, shall forfeit the whole amount of the stipulated wages; and shall pay a fine of 100 *Paṇas* to the King.—If the Employer dismisses an Hireling before the expiry of his term, he shall pay his entire wages and also a fine of 100 *Paṇas* to the King, except when the Hireling has been at fault.'

'*Mūlyam*'—wages.

Says *Vṛddha-Manu*—

[333] 'If an Employee destroys anything through carelessness, he should be made to pay its equivalent; if he does it through malice, he should be made to pay double the price; but he shall not be made to pay if the article has been stolen by thieves, or burnt by fire, or washed away by floods.'

'*Should be made to pay*'—i.e. the Hireling should; this is clear from the Context. If, however, the thing has been destroyed without any fault of his, he should not be made to pay anything.

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* Says the *Arthashāstra* (3.14)—If the Labourer is physically unable to do the work,—or the work is too degrading,—or he is ill or in trouble,—and is consequently unable either to do the work or get it done,—he is not to be punished; but he shall refund the wages to the Employer, who will get his work done by others.—If there has been an agreement between the Employer and the Employee to the effect that the Employer shall not engage another Labourer, and the Employee shall not work for another Employee,—then, if either party fail to keep his contract, he shall be fined 12 *Paṇas*.

Says *Bṛhaspati* (15.17)—

[334] 'When a Hireling commits an improper act under orders from his Employer,—and for the benefit of the latter,—the fault shall lie with the Employer.'

'*For the benefit*'—of the Employer.—'*Improper act*', such as theft.*
In the *Matsya-Purāṇa*, we read—

[335] 'Having received his fee, if the Master does not impart instruction in his craft,—he should be fined the amount of the whole fee, by the righteous King.'

Vṛddha-Manu—

[336] 'If the Employer dismisses the Hireling after having sold his merchandise, before reaching the stipulated destination,—he should pay also for that part of the journey which has not been traversed; but at the rate of only a half of the stipulated wages.'

'*Agatasyāpi*'—Even though he has traversed the stipulated journey, the wages of the Hireling should have to be paid; but only one half of the wages, for the untraversed part of the journey.
Says *Kātyāyana*—

[337] 'If the merchandise be confiscated or stolen on the way, the carrier is to receive his wages only for the distance actually traversed.'

'*Āsidhyēta*'—becomes captured or confiscated (or stopped, according to *Vivādaratnākara*, p. 164) by some one.
Bṛhaspati (16.18)

[338] 'If the Employer does not pay the wages, after the work has been completed, he should be compelled by the King to pay it,—as also a proportionate fine.'

Kātyāyana—

[339] 'If the Employer abandons, on the way, an assistant who is tired or ill,—and does not wait in a village for three days in order to enable him to recover,—he should be fined the first amercement.'
'*Assistant*'—i.e. Hireling and the like.

SECTION (D)—RULES RELATING TO PROFESSIONAL WOMEN

Says *Nārada*—

[340] 'If a Professional Woman, having accepted her Fee, refuses to meet the man, she should be made to pay double the amount of the Fee.—The man also who, having paid the Fee to her, refuses to meet her, should forfeit the Fee paid by him.'

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* Such as demolishing a boundary with a view to enlarging the employer's fields—(*Smṛtichandrikā*, p. 476).

Smṛti says—

[341] 'If the Professional Woman is ill or tired or in distress, or engaged in work for the King,—and consequently does not come to a man when invited, she is not to be regarded as having done anything wrong.'

'*Avāchyā*'—faultless.—'*Vaḍavā*' here stands for the Professional Woman. In the *Matsya-Purāṇa*, we read—

[342] 'If a man had recourse to intercourse in an improper part of her body, —or make her associate with several men,—he should be made to pay eight times the Fee, and also an equal amount as Fine.'

'*Improper part*'—such as the Mouth. Or having got her for himself alone, if he makes her associate with several men, he should pay to the Woman eight times her fee, and also an equal amount to the King as fine.

Again—

[343] 'If one brings over the Professional Woman for the purpose of one man, while naming to her some one else, he should pay a fine of 1 *Māṣa* of Gold to the King.'

[344] 'Having invited the Professional Woman, if one does not give her satisfaction, he should be made to pay double of the Fee; double also as fine to the King. In this way the Law is not disobeyed.'

[345] 'If several men meet any one Professional Woman, each of them should severally pay double the fee to her and also another double as fine to the King.'

Says *Nārada*—

[346] 'In disputes arising in connection Professional Women, leading Professional Women, as also their lovers living in their houses, decide all matters.'

SECTION (E)—RULES RELATING TO THE HIRING OF HOUSES, ETC.

[*Nārada*, p. 20-21.]

[347] 'If a man has built a house on land belonging to another, and lives in it, paying rent to the land-owner,—he may take away with him, when he goes out, the thatch, the timber, the bricks and other materials.'

[348] 'If he has been residing on land belonging to another without paying rent and against that man's wishes,—he shall go out of it and shall not take with him, on leaving, the building materials.'

Says *Kātyāyana*—

[349] 'Having taken on hire a house or estate or a shop,—so long as he does not restore them to the owner, he should be made to pay the hire.'

'*Water*' here stands for the water-reservoir dug by another person and not yet consecrated to public use.

[350] 'After having engaged an elephant, a horse, an Ox, a mule, or a camel, —one must be made to pay the hire so long as he does not restore the animal to the owner.'

Says *Vṛddha-Manu*—

[351] 'If a man has hired a cart, but does not go out and refuses to pay the hire,—he should be compelled to pay the hire, even though the hire may not have been actually earned.'

The '*Cart*' includes the Ox, the Boat and such other things also.—'*Not earned*'—i.e. even if the cart has not been used.

Says *Nārada*—

[352] 'If one has obtained utensils on hire, he should return them to the owner after the expiry of the stipulated time. If there has been any damage or loss, it should be made good by the hirer; except when such loss or damage has been due to a supernatural calamity.'

That is, if what is returned is not exactly in the condition in which it had been taken,—or if it has been lost in course of time, except through some act of God or King,—it should be made good by the hirer.

CHAPTER VII

Rules relating to the Owner and Keeper of Cattle

On this point says *Manu*—

[353] 'If the hired Cattle-keeper is one paid with milk, he shall, with the Owner's permission, milk the best of ten cows; this shall be the Keeper's wages, if he receives no other wages.' *

'*Kṣīrabhṛti*' is one who is paid his wages in milk.—He shall milk the one cow that may be the best among ten cows;—when '*he receives no other wages*',—in the shape of food and clothing, etc.—This refers to the Keeper who looks after milch cows only.

As regards cases where the Keeper looks after milch as well as dry cows, says *Nārada* (6.10)—

[354] 'For tending a hundred cows, the Keeper shall get a heifer annually; for tending two hundred cows, he shall get a milch cow every year; and he shall get the milk of all the cows tended by him on every eighth day.'

'*Vatsatarī*', 'heifer', is the three-year † old cow. As many cows as may be in milk,—the milk of all those he will get as wages, every eighth day.

Says *Bṛhaspati*—

[355] 'One *supported by milch cows* should get the milk of all the cows every eighth day.' ‡

'*One*'—i.e. the Cattle-keeper.

And *Nārada* (6.11)—

[356] 'The Owner shall make over the cows to the Keeper every morning; and the Keeper shall bring them back to the Owner in the evening, after they have had their feed and drink.' §

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* '*Best*'—according to one reading, the *worst*.

Says *Medhātithi*—The wages are to be commensurate with the labour involved in the tending. The exact wages in each case shall be determined according to the principle that if he receives nothing else in the shape of subsistence, he shall take the milk given by one cow.—Thus for the work of looking after milch and non-milch cows, heifers, bulls and calves, the Owner shall apportion to the keeper sometimes the *third*, sometimes the *fourth*, part of the entire milk-produce.—This is a mere indication; in each case, local custom has to be followed.

If some of the cows are dry, the wages payable are determined on the basis of their normal milk-produce when in milk—(*Parāsharamādhava*, p. 263).

† *Vivādaratnākara* (p. 170) has 'two years'; so also *Vīramitrodaya* (p. 442) and *Parāsharamādhava* (p. 263).—'*The milk of all the cows*' is to be taken only with the keeper of *two hundred* cows, according to *Madanaratna*,—but to both the keeper of 100 as well as that of 200 cows, according to *Kalpataru*;—says *Vīramitrodaya* (p. 443), which itself favours the former view.—This rule is meant for cases where no special wages have been previously settled—say *Smṛtichandrikā* (p. 483), *Parāsharamādhava* (p. 263) and *Vīramitrodaya* (p. 433).

‡ The keeper of 200 cows is meant here, says *Vīramitrodaya* (p. 433).

§ The word 'cows' here stands for cattle in general;—says *Smṛtichandrikā* (p. 484).

'*Chīrṇāḥ*'—have taken their feed of grass;—'*pītāḥ*'—have taken water.
Yājñavalkya (2.164)—

[357] 'The Keeper shall bring back and restore to the Owner the cattle exactly in the same condition in which they had been made over to him. If any of the cattle happen to die or get lost, through his carelessness, the hired Keeper shall be made to make it good.'

And *Manu* (8.230) *—

[358] 'During the day, the responsibility (for the safety of the cattle) rests with the Keeper,—and during the night, with the Owner, if in his own house; † if otherwise, the responsibility for their safety shall rest with the Keeper.'

Manu (8.233) and *Nārada*—

[359] 'If the cattle has been taken away openly by thieves, the Keeper shall not be called upon to make it good,—if he informs his own Master of it at the proper place and time.' ‡

'*Place*'—such as may facilitate the search; so also 'time'.
Vyāsa—

[360] 'No blame lies with the Keeper if the cattle is lost or stolen,—either after the Keeper himself has been made captive, or when the whole village has been pillaged, or when there are disturbances in the Kingdom.'

And *Bṛhaspati*—

[361] 'The Keeper should guard the cattle against dangers from insects, thieves and tigers, as also from caves and pits. He should try his best and should cry for help, and also inform the Master.'

'*Shvabhra*' is *pit*; and '*darī*' is *cave*.

[362] 'If he does not try his best, or not cry for help, or does not inform the Master, then he should bear the loss and also pay a fine to the King.'
'*Bear the loss*'—i.e. pay for it.

Says *Manu* (8.232)—

[363] 'The Keeper alone is to make good what has become lost, or been destroyed by worms, or killed by dogs, or has perished in an unsafe place,—if it was left without human aid.'

'*Naṣṭam*'—i.e. taken away by thieves and others.—'*Without human aid*'—i.e. without such aid as was well within the capacity of the Keeper. If any animal has become thus 'lost', etc., it has been due to the remissness

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* '*Nāradaḥ*', in the printed text is wrong. It should be '*Manuḥ*' as in Ma.

† '*If in his house*'—i.e. if they have been safely penned in the cattle-shed by the Keeper.—'*If otherwise*'—i.e. if they have not been brought into the house, and have been kept in the pastures, during the night also—(*Medhātithi*).

‡ '*Openly*'—with beat of drums;—this is meant to indicate the helplessness of the Keeper.—'*At the proper time*'—i.e. immediately after the occurrence,—'*at the proper place*'—wherever the Master may be. In case the Keeper conveys the information to the Master after a long time, the blame shall lie with him—(*Medhātithi*).

of the Keeper; and this is the reason why he should be made to make good the loss. *

Says *Yājñavalkya* (2.165)—

[364] 'In the event of the cattle being destroyed on account of some fault of the Keeper's, punishment shall be inflicted on the Keeper, in the shape of a fine of thirteen *Paṇas* and a half; and he shall also pay the price to the Owner.' †

Viṣṇu (5.139)—

[365] 'If the Keeper milks a cow without the Owner's permission, he should pay a fine of 25 *Kārṣāpaṇas.*'

In the *Brahma-Purāṇa* we read—

[366] 'If the cowherd who has received his wages abandons the cows in the wild forest and wanders about in the village, he should be killed (punished) by the King; so also the "man with the lancet" roaming in the forests.'

'*The man with the lancet*' is the Barber.

[367] 'If through disease or some other cause, the cow dies in the house, then the Owner of the cow should be punished,—if he has not paid the wages of the Keeper.'

Says *Nārada* (6.17)—

[368] 'It is according to these principles that disputes arising with all Keepers have to be settled.—In the event of the death of the animals, the Keeper becomes cleared (of blame) by producing the tail, the horns and the rest.'

What is meant is that he should prove, by some means or the other, that the animal has really died.

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* '*Dogs*'—This stands for jackals, wolves, tigers and other wild animals. '*Human aid*'—such as remaining near the cattle, lighting fires for keeping away wild animals and so forth. In a case where the Keeper himself has been on the point of death, and has been unable to scare away the animals—or where the cattle themselves, while stampeding, have fallen into a pit, and so on,—the Keeper shall not be held responsible—(*Medhātithi*).

† '*Sārdhatrayodasha*' has been taken as 13½ by *Aparārka* and *Mitākṣarā*; but as 12½ by *Parāsharamādhava* (p. 263) and *Vīramitrodaya* (p. 445).—'*Dravyam*' has been taken by *Mitākṣarā* to mean the price of the animal as computed by impartial arbitrators.

CHAPTER VIII

Breach of Customs and Conventions

Says *Bṛhaspati* (17.5-6 *et seq.*)—

[369] 'A compact formed among villagers, companies and tribes is called *Convention*. Such conventions are made at times of calamity and also in regard to acts of piety.—When danger is apprehended from highwaymen, it is regarded as a calamity common to all; and such danger should be repelled by all, not by any one man.' *

[370] 'Mutual confidence having been previously established by oath, or by written compacts, or by sureties,—they shall set about their work' —(*Bṛhaspati* 17.7).

[371] 'Honest men, learned in the *Veda* and in *Dharma*, self-controlled, able, sprung from noble families, and efficient in all kinds of work,—shall be appointed as Heads (of the Corporation)—(Ibid. 17.9).

[372] 'Two, three or five persons shall be appointed as advisers of the Corporation; their advice shall be followed by the villagers, companies and tribes'—(*Bṛhaspati* 17.10).

'*Grāma*' here stands for the Corporation of the inhabitants of the village; and '*Gaṇa*' companies, or groups, of *Brahmaṇas*, etc.

Says *Yājñavalkya* (2.188)—

[373] 'All members of the Corporation shall follow the advice of the Advisers; one who goes against it, shall be fined the first amercement.'

[374] 'Among them, if any one obstructs what is reasonable, or gives no opportunity to the speaker to speak, or urges what is unreasonable, —he should be fined the first amercement'—(*Kātyāyana*).

Says *Nārada* (10.2)—

[375] 'Among heretical sects, citizens, trade-guilds, unions, tribes and other corporate bodies,—the King should maintain the Conventions; as also in regard to fortified towns and the open country.' †

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* '*Acts of piety*'—such as the repairing of temples, tanks and the like. The *Conventions* referred to are such as—(1) raising a common fund by subscriptions, during famines, (2) arranging to supply one armed guard at every house-hold, when danger from robbers is apprehended, (3) organising a deputation to wait upon the King for the redressing of certain common grievances.

† The Conventions referred to are as follows:—(*a*) Among Heretical Sects, there are conventions for the governance of monasteries and other institutions;—(*b*) among corporations of merchants trading in diverse kinds of merchandise, there are such conventions as that 'members who ill-treat messengers should be punished'; (*c*) among trade-guilds, there are conventions regarding monopolies and prices;—(*d*) among unions of elephant-drivers and horse-riders and (*e*) 'troops' of soldiers, there are such conventions as 'no one shall join in battle except in the company of others';—(*f*) among tribes—groups of relations,—there are such conventions as, 'the Ear-piercing ceremony shall be performed during the fifth

'*Pāṣaṇḍa*'—sects outside the pale of the Vedic Religion.—'*Naigama*'—
—citizens.—'*Pūga*—Corporation of traders and others.—'*Vrāta*'—Troops of soldiers and others.—The term '*ādi*' including *all* societies, those named are to be taken only as illustrative.

Says *Yājñavalkya* (2.186)—

[376] 'Whatever duty devolves upon a man by virtue of Convention,—that he shall carefully perform, so far as it may not conflict with his religious duties; so also shall he perform the duties imposed by the King.'

'*By virtue of Convention*'—such as those calculated to bring prosperity and security to the Corporation; e.g. 'Every month, all members of the Corporation present themselves before the King'.—'*Duties imposed by the King*',—such as 'all you, Sirs, will kindly perform propitiatory rites for the welfare of the Kingdom.'—One should never transgress such conventions.*

Kātyāyana—

[377] 'If one does not perform the duties promulgated by the King, he incurs sin and deserves to be despised and punished as offending against the King's Government.'

Yājñavalkya (2.187)—

[378] 'If any member of the Corporation should misappropriate the property of the Corporation,—or transgress its Conventions,—the King shall confiscate his entire property and banish him from the Kingdom.' †

Kātyāyana—

[379] 'One who is given to violence, one who sows dissension, one who injures the property of the Corporation,—all these should be turned out of the community after reporting to the King; so says *Bhṛgu*.'‡

Referring to 'Conventions', *Bṛhaspati* goes on to say (17.13)—

[380] 'It should be obeyed by all. If a member, who is able to do so, fails to act up to the Convention, he shall be punished with confiscation of his entire property and banishment from the town.—If any one breaks it or ignores it, the fine prescribed for him is six *Niṣkas* of four *Suvarṇas* each.'

In this same connection having mentioned the 'six *Niṣkas*' *Manu* (8.221) goes on to add further—'a silver *Shatamāna*'.

Though it is well known that a *Niṣka* is made up of *four Suvarṇas*, yet the qualification 'of four *Suvarṇas* each' has been added (in the texts of

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year of the child';—(*g*) in regard to 'fortified towns', there are such conventions as 'no food shall be sold outside';—(*h*) in regard to the 'open country', there are conventions regarding duties to be realised from foreign traders—(*Smṛtichandrikā*, p. 523).

* Such rules would be 'in conflict with one's religious duties' if the time fixed for the said attendance were the same as that prescribed for the Twilight Prayers for instance.

† This applies to cases where the offence is very serious. For minor offences of this kind, the penalty shall be as prescribed by *Manu*, p. 221—i.e. a fine of 6 *Niṣkas*, 4 *Suvarṇas* and one silver *Shatamāna* (*Aparārka* and *Mitākṣarā*).

‡ In some digests, this text is read with '*nṛpaiḥ*' in place of '*nṛpē*', in which case the meaning would be that these persons are to be turned out *by the King* after due notification.

Bṛhaspati and *Manu*), in order to preclude those other '*Niṣkas*' which have been declared to contain *150 Suvarṇas*, and *5 Suvarṇas*.

The '*Shatamāna*' is equal to 320 *Rattis*.*

[381] 'One who is malicious, or a back-biter, or a sower of dissention, or given to violence, or inimically disposed towards the Guild, the Corporation or the King,—shall be banished therefrom'—(*Bṛhaspati* 17.16).

'*Aruntuda*'—one who hurts the vitals.—'*Sūckaka*'—the back-biter.
Kātyāyana—

[382] 'If, among persons entitled to eat out of the same dish, or in the same line,—any one refuses to eat with another, without indicating any defect in that person,—he shall be punished.'

Bṛhaspati (17.21)—

[383] 'Those persons who combine and conspire to cheat the State of the royal dues should be made to pay eight times as much;—so also the absconding traders.'

'*Rajabhāgam*'—what is payable to the King.
Says *Yājñavalkya* (2.190)—

[384] 'When a member is sent out on some business of the Corporation, whatever he may obtain on this mission, he shall make over to the Corporation; if he fails to do so, he should be made to pay eleven times as much.'

And *Bṛhaspati* (17.22)—

[385] 'Whatever may be obtained by any one member shall belong equally to all the members of the Corporation.'

Kātyāyana—

[386] 'If a debt contracted in the name of the Corporation has been eaten up by any member of it,—or has been used for his own purpose,—it shall be payable by that member.'

'*In the name of the Corporation*'—i.e. under the pretext that it is on behalf of the Corporation;—such a debt shall be payable by the member who contracted the debt.

[387] 'Whoever might have entered the Guilds or Corporations or Trade unions,—shall share equally their assets and liabilities.'

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* Under 8.220, *Manu* has laid down 'banishment' as penalty for the breach of Convention. That is meant for cases where the breach has been due to greed; the present section lays down the penalty for cases where the breach has been due to ignorance—(*Medhātithi*).

According to *Aparārka* (p. 793), *Mitākṣarā* (2.187), *Parāsharamādhava* (p. 253) and *Vīramitrodaya* (p. 429)—these texts (of *Bṛhaspati* and *Manu*) lay down *four* distinct penalties—(1) Banishment, (2) the fine of 6 *Niṣkas*, (3) the fine of 4 *Suvarṇas* and (4) the fine of one *Shatamāna*; and which one shall be inflicted in a particular case shall be determined by the caste, the learning and other qualifications of the offender, or (according to *Aparārka*) by the nature of the offence.—*Medhātithi* has taken Banishment as one meant for the more serious cases of Breach, and the Fines as for cases where the offence is less serious.—*Vīramitrodaya* does not accept the view that the caste of the offender can be a determining factor.

That is, whoever may have become members, in the past, of the Corporation of traders and others, with the consent of all the members, shall all share equally in the previous assets and liabilities as also in the initial capital of the Corporation.

[388] 'Every member of a Corporation shares equally in all its assets, relating to *articles of food,* other divisible properties, slaves * and religious acts. The man who has gone out for some purpose of his own shall not be entitled to any shares.'

'*Articles of food*'—such as sweet-meats and the like.—'*Pragata*'—is the man who has one out of the Corporation of his own accord, for some specific purpose of his own; such a person shall not be entitled to any shares.

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* In *Vivādaratnākara* (p. 188) and other digests, we find '*dāna*' in place of '*dāsa*'; '*dāna*' is *charity.*

CHAPTER IX

Rescission of Sale

Says *Nārada* (8.4)—

[389] 'When a man has sold a property for a certain price, if he does not deliver it to the purchaser, he shall be made to deliver the property along with its produce, if it is immovable property,—and along with profits accruing from it, if it is movable.'—If there has been a fall in the market-value of the property during the interval, the purchaser shall receive the property along with the difference (in the two values).—This is the rule relating to cases where the parties are inhabitants of the same place. In the case of persons trading abroad, the profit derived from the foreign trade (shall be delivered to the purchaser).'

'*Sthāvarasya*'—of land and other immovable properties;—'*Kṣaya*'—the loss sustained in the shape of the produce, in the shape of grains, etc.; in the case of *movable* property,—such as the ox and the like—the 'profit' involved is in the shape of the using and driving of the animal;—in the case of *Cows*, it is in the shape of the milk.

In case the article purchased—such as Gems and the like,—and not delivered, loses its market-value—gradually, through lapse of time,—then it should be delivered to the purchaser, along with the loss in its value.

In the case of persons trading in foreign lands,—i.e. those who travel about in foreign countries, the vendor shall pay the profit that he may have made during such journeyings.

Says *Viṣṇu*—

[390] 'If a man does not deliver to the purchaser the goods sold to him, and the price received,—he shall be made to deliver it, along with interest; and he shall be fined 100 *Paṇas* by the King.'

All this should be understood as referring to the case where the Vendor has received the full price; so that there is no wrong done if the article is detained for the purpose of realising the price. This has been thus declared by *Nārada* (8.10).

[391] 'All these rules apply to cases where the price has been paid by the Purchaser. Until the price has been paid, no blame can attach to the Seller, except when there has been an agreement to the contrary.'

Nārada (8.6) again—

[392] 'If the article sold happens to be damaged, or destroyed by fire or carried off, the loss shall devolve upon the seller who did not deliver it after the sale.'

And *Yājñavalkya* (2.256)—

[393] 'If damage is done to the article sold, through an act of God or of the King,—the loss devolves upon the Seller,—if he has failed to deliver the article sold, even though requested to do so.' *

* For the satisfaction of the purchaser, the seller should deliver to him another article similar to the one sold, or refund the price paid—(*Aparārka* and *Mitākṣarā*).

[394] 'If the Purchaser refuses to accept delivery of the article sold to him, he shall suffer the same penalties as those prescribed for the Seller refusing to deliver the goods sold'—(*Nārada*).

Manu (8.222-223, 228)—

[395] 'After having bought or sold an article, if the Buyer or Seller repents of it, he should return or take back that article within ten days of the transaction; after ten days he shall not return or take it back; if he does return or take it back, he shall be fined by the King 600 *Paṇas*.'—In connection with any transaction, if there is repentance on the part of any party, he should be brought to the path of rectitude in the said manner.'

And *Kātyāyana*—

[396] 'If the Purchaser does not receive the article when made available,—or, if the Seller does not deliver the sold article in an unsoiled condition to the Purchaser,—he shall be allowed to recover what belongs to him, on paying the tenth part of the price agreed upon.'

'*Prāptam*'—made available to him, placed at his disposal.

In regard to the case where the article is not placed at the disposal of the Purchaser, the same authority says—

[397] 'But the said penalty shall not be inflicted (upon the Purchaser) if the article has not been made available, even though the transaction has been completed. This rule shall be applied only within ten days of the sale; after the ten days, there can be no rescission of the sale.'

*'*Kriyākāra*' is *transaction*, in the shape of attestation by witnesses on the sale-deed executed and so forth—even when all this has been done, if the article sold has not been placed at his disposal, then, if, within the time-limit, he returns it to the Seller,—the Purchaser does not have to suffer the tenth part of the price. What is meant is that if the article sold has a perceptible defect, there can be no rescission after the time-limit; when, however, the article is entirely defective, and the Seller has concealed the defects and sold it deceitfully,—it may be returned publicly, even after the expiry of the time-limit.

Says *Bṛhaspati* (18.4)—

[398] 'The foolish man, who, knowing an article to be defective, sells it, shall be compelled to pay twice its price to the Purchaser, and a fine of the same amount to the King.'

[399] 'What has been sold by one who is intoxicated or insane,—at a very low price,—or under the spell of fear,—or by one who is not his own master,—or by an idiot,—should be given up (by the Purchaser), and it may be taken back (by the Seller).'

'*It should be given up*'—it is what ought to be given up, by the Purchaser; and '*it may be taken back*'—by the Seller.—'*One who is not his own master*'—either by nature or through some cause.†

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† *Chintāmaṇi* and *Vivādaratnākara* (p. 192) read '*Kriyākāre*' and explain it as above; *Smṛtichandrikā* (p. 511) however, reads '*Kriyākāle*' and explains it as 'when the time has arrived for the purchaser to use the article'.

‡ According to *Vivādaratnākara* (p. 193), this rescission may take place even after the lapse of the statutory *ten days*.

[400] 'When a man has sold an article to one person, and delivers it to another, he shall be made to repay twice the price, to the Purchaser, and also a fine equal to the same amount.'

The 'another' person meant is one who is not in any way related to the former person, and who has not been deputed by him to receive the article.

According to *Vivādaratnākara* (p. 192), this penalty is meant for the case where the Seller has carried on negotiations regarding the price with one man, but has actually sold it to another.

Similarly—

[401] 'When the Purchaser has not accepted the article sold when delivered to him,—if the Seller were to sell it to another person, he would be doing nothing wrong.'

And *Yājñavalkya* (2.255)—

[402] 'If the first Purchaser does not receive the article sold and delivered to him, it may be sold again; if the article has, in the meantime, suffered any damage on account of the said Purchaser's fault,—the loss shall devolve on that Purchaser.'

So also (*Nārada*)—

[403] 'When the bargain has been clinched by the payment of Earnest-money, (if the transaction should fail),—the Seller shall pay double the amount of that money.'

That is, when the Seller has agreed to sell his commodity and has accepted money advanced by the purchaser,—this money is called 'Earnest-money' ('*satyaṅkāra*', 'Bargain-clincher');—if subsequently the Seller does not agree to sell the article, he should repay to the Purchaser double the amount of the Earnest-money.

Says *Nārada* (8.12)—

[404] 'It is for the sake of profit that merchants carry on the buying and selling of all sorts of merchandise; that profit is in proportion to the high or low prices paid for the things. Merchants therefore shall fix a fair price for their commodity, in accordance with the nature of the locality and the season,—and refrain from dishonourable dealings. Such is the right method of trade.'

What has been said above in connection with buying-transactions,—that there shall be a time-limit of *ten days* (see Text No. 395 above),—is meant only for all kinds of 'grains'; as declared by *Vyāsa* and *Nārada* in the following text—

[405] 'Leather, Wood, Yarn, Wine extracted from grains, liquids, cloth, base metals and gold,—these commodities shall be examined immediately after the sale. Milch cattle shall be tested for three days; and beasts of burden for five days; in the case of pearls, diamonds, corals and other precious stones, the period of testing may extend to seven days; male slaves shall be tested for a fortnight, and female slaves for a month; grains of all sorts, for a month; Iron and Cloth for one day.'

Yājñavalkya (2.177)—

[406] 'Seeds and grains may be examined for ten days; Iron for one day; beasts of burden for five days; precious stones for seven days; female

slaves for a month; milch cattle for three days and male slaves for fifteen days.' *

The same has been declared by *Bṛhaspati*—

[407] 'If before this, some defect should appear in the article sold, it should be returned to the Seller and the Purchaser shall receive back the price paid.'

Even if the article is already defective, it should be returned before the said time-limit, as declared by *Kātyāyana*—

[408] 'When an article has been purchased unwittingly, without due examination,—if it is, later on, found to be defective, it may be returned to the Seller, within the time fixed, not otherwise.'

'*Within time*'—i.e. within the time laid down for the examination of the various kinds of commodities.—'*Not otherwise*'—i.e. not after the lapse of the said time.

With reference to things in which the Purchaser has subsequently detected a defect, says *Nārada* (9.7)—

[409] 'A worn garment, in a ragged condition and soiled with dirt, cannot be returned to the Seller, if it was in that condition when purchased.'

All this refers to cases where the article has been taken without waiting for the time laid down for examination.

Says *Yājñavalkya* (2.258)—

[410] 'If a merchant, not knowing the likely profit and loss involved, has purchased a commodity, he shall not seek to rescind the sale. If he does, he becomes liable to be fined the sixth part of the price paid.' †

Nārada also—

[411] 'Having made a purchase, the wise merchant shall not repent of it; he should find out, beforehand, the likely profit and loss on the commodity.'

[412] 'The intending Purchaser himself shall, before purchasing an article, examine it, in order to find out its good and bad points; when the thing has been examined and approved of, and then purchased,—the Purchaser shall not give it up.'

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* All these rules refer to cases where the thing has been purchased without previous examination,—says *Vivādaratnākara* (p. 197).

† The simple meaning of this text is as given above; which is in accordance with the explanation provided by *Aparārka*. According to the *Mitākṣarā* however, the meaning is as follows:—When a commodity has been sold and bought, the *Purchaser* may ask for the rescission of the transaction within the prescribed time, only if he finds out, after the sale, that the price of the commodity, at rates prevalent at the time of the transaction, should be lower than what he has paid;—and the *Seller* may ask for its rescission only if he finds out that the price should be higher than what he has charged. If either of them acts contrary to this, he should be fined the sixth part of the price paid.

The *Mitākṣarā* goes on to add—There are only three grounds for rescission of sale:—(1) Detection of some defect in the article, (2) too high price, and (3) too low price. In the absence of any of these reasons, if either party asks for rescission, even within the prescribed time, he shall be fined. Even when the above grounds are present, if the rescission is asked for after the lapse of the prescribed time, the party asking for it shall be fined.

Also *Bṛhaspati* (18.3)—

[413] 'The Purchaser should examine the thing himself and also show it to others; when after it has been examined and approved by several men, it is purchased,—the Purchaser should not return it.'

Even before the prescribed time-limit, the thing may be returned; as says *Nārada* (9.2-3)—

[414] 'Having purchased a commodity for a certain price, if the Purchaser thinks that he has not done well in making the purchase, he should return it, in the same condition, to the Seller, on the same day. If he returns it on the second day, the Purchaser shall suffer the thirtieth part of the price paid; if on the third day, he shall suffer double of the thirtieth part; after the third day, the thing must remain with the Purchaser.'

This applies to cases where the examination has to be made within three days.*

In connection with things like *milch cattle, Kātyāyana* has declared as follows—

[415] 'Having purchased a milch cattle or such other things, if the Purchaser repent of it, and return it,—though it is flawless,—he should bear the penalty of having to pay at the same time the tenth part of the price paid.'

'*At the same time*'—i.e. at the time that he returns the cattle.

This rule refers to a case where the Purchaser has not taken possession of the animal sold. In the case where the Purchaser *has* taken possession of the animal, the rule applicable is the following †—

[416] 'Having purchased an article, if the Purchaser repent of it *after it has come to his hands*, he may relinquish it, after paying the sixth part of the price paid;—so says *Bhṛgu*.' ‡

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* This rule is meant to apply to cases where the article, even after being purchased, still continues to remain 'merchandise', in the sense that it is laid out for sale by the tradesman who bought it from a fellow-trader only for selling it on his own account; i.e. to cases of mutual transaction among tradesmen themselves. In all other cases, the rule is as laid down by *Manu* 8.222 (Text No. 395 above)—(*Medhātithi* on *Manu* 8.222).

'*In the same condition*'—if the article has been damaged in any way, the Purchaser shall pay to the Seller what may be adjudged by arbitrators to be the cost of repairing that damage—(*Smṛtichandrikā*, p. 519).

According to *Vivādaratnākara* (p. 196), this rule refers to such commodities as suffer from use.

'*Thinks*'—this implies that the actual presence of defects in the commodity is not necessary; it is sufficient if the Purchaser *thinks* that he has made a foolish bargain—(*Vīramitrodaya*, p. 435).

† The right reading '*bhaviṣyad-vākyam-ato*' is supplied by Ma. The penalty here prescribed—*tenth* part of the price—is meant for those cases where the thing sold is such as does not suffer from being used. For cases where the thing is liable to suffer from use, the penalty to be paid is the *sixth* part of the price, as laid down in the next text—(*Vīramitrodaya*, p. 435).

‡ '*Come to his hands*'—this shows that the higher penalty—of the *sixth* part—is to be paid if the man returns the article after having received delivery of it, and the lower penalty—of the *tenth* part—is payable if he seeks rescission of the sale before the article has come to his hands—(*Vivādaratnākara*, p. 197).

In a case where the defect of the article has been concealed before its sale,—the article may be returned even after the lapse of a long time; as said by *Manu* (8.203)—

[417] 'A commodity should not be sold, if it is mixed up with another, or with blemishes, or deficient, or remote, or hidden.'

'*Anyat*'—the superior commodity, of saffron for instance,—'mixed up with *another*'—i.e. with the *Kusumbha* flower (which has the appearance of saffron).—'*Sāvadyam*'—i.e. what has been licked by the dog.—'*Dūrē*'—at a distance, which makes it impossible to perceive its real character.—'*Tirohitam*'—hidden under cloth.—When all this becomes known,—even after a long time,—the article may be returned.*

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* This points out some of the defects that would justify rescission of the sale—(*Smṛtichandrikā*, p. 520).

'*With blemishes*'—i.e. which, having been kept in a closed box for a long time, has lost its quality and substance and has decayed, though still appearing as fresh; e.g. cloth and other commodities.—'*Deficient*'—less in weight or measure.—'*Remote*'—away from the place of the sale, and described as 'clothes or such things lying in my house in the village'.—'*What is hidden*'—tied up in a piece of cloth.—Every commodity shall be sold after having been fully exposed and described; sales effected otherwise are invalid—(*Medhātithi*).

CHAPTER X

Boundary-Disputes

Says *Manu* (8.245–251)—

[418] 'When a dispute regarding boundaries has arisen between two villages, the King shall settle the boundary during the month of *Jyeṣṭha* (June), when the land-marks are distinctly visible.—He shall plant boundary-trees,—such as the *Nyagrodha*, the *Ashvattha*, the *Kimshuka*, the *Shālmalī*, the *Sāla* and the *Tamāla*; as also trees with milky-juice;—also Thickets, Bamboos of various kinds, the *Shamī*-tree, Creepers and Mounds, Reeds and *Kubjaka*-thickets; in such a way that the boundary may not become obliterated.—Tanks, Water-reservoirs, Ponds and Fountains should be set up on boundary-lines; as also Temples.—He shall also set up hidden boundary-marks,—seeing that in the world there are constant trespasses due to the ignorance of boundaries among men.—He shall put in also Stones, Bones, Cow's Hair, Chaff, Ashes, Potsherds, Dry Cowdung, Bricks, Cinders, Pebbles and Sand,—other such like things which the Earth may not eat up in time:—these he shall secretly set up on the junctions of boundaries.'

The trees and other things have been named here only by way of illustration.

[419] 'By these signs shall the King determine the boundary between two contending parties; as also by long-continued possession and by flowing streams of water'—(*Manu* 8.252).

Bṛhaspati (9.3) mentions the following—

[420] 'Wells, Tanks, Pools, Large Trees, Gardens, Temples, Mounds, Channels, River-courses, Reeds, Shrubs, Piles of Stones.'

[421] 'If, even on the inspection of the marks, there should be doubt, the settlement of the boundary-dispute shall depend upon witnesses'—(*Manu* 8.253).

Again—

[422] 'In the absence of witnesses, four honest inhabitants of neighbouring villages shall make the determination of the boundary, in the presence of the King'—(*Manu* 8.258).

[423] 'In the absence of the inhabitants of neighbouring villages, and original natives of the place (since gone abroad),—the King may examine the following frequenters of forests:—hunters, fowlers, cowherds, fishermen, root-diggers, snake-catchers, corn-gleaners and other foresters'—(*Manu* 8.259-260).

[424] 'As they, on being questioned in fairness, declare the marks of boundary-lines between two villages,—even so shall the King fix it'—(*Manu* 8.261).

The method of deposition by these people also has been thus described by the same authority—

[425] 'Placing earth on their heads, wearing garland and red clothes, and being sworn by their respective meritorious deeds, they shall depose honestly—(*Manu* 8.256).—In accordance with that shall the King lay down the boundary and also record the names of the deponents'—(*Manu* 8.255).

Nārada says—

[426] 'The boundary should not be determined by any one man single-handed, even though he be quite reliable. This work being an important one, its fulfilment should depend upon several persons'—(11.9). *

[427] 'Should, however, a single man undertake to determine the boundary, he should do so after having kept a fast, in a collected frame of mind, wearing a garland of red flowers and red clothes, having placed earth on his head'—(11.10).

'Fasting' is the only condition laid down here, in addition to those laid down above (by *Manu*).
On this subject, says *Bṛhaspati*—
Bṛhaspati (19.11)—

[428] 'But where there are no witnesses and no land-marks, even a single person accepted by both parties (may determine the boundary).'

The compound '*jñātṛchihna*' is to be taken as '*jñātṛ*'—knowing witnesses—and '*chihna*'—land-marks.†
Kātyāyana—

[429] 'The King knowing his duty should not call wicked persons. Barring all wicked persons, he should bring together the inhabitants of neighbouring villages and natives of the place, and then in consultation with them, he should determine the boundary; such is the view of persons learned in the Law.'

'*Sāmantas*'—are persons born in the neighbourhood of the disputed boundary.
Says *Manu* (8.257)—

[430] 'If they decide in the right manner, they, being truthful witnesses, become purified; but if they decide wrongly, they should be made to pay a fine of 200 each.'

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* This prohibition regarding the single man is meant for those cases where no such man is available who enjoys the confidence of all the parties concerned,—says *Mitākṣarā* (on 2.152).

† In regard to all these methods, *Mitākṣarā* (on *Yājña.* 2.152) remarks as follows:—The final decision of the King on the basis of such depositions shall be withheld for a month and a half; if during this time, nothing untoward happens to the deponent,—either through an act of God or of the King,—which would be indicative of his having perjured himself,—then alone should his deposition be accepted as reliable and the matter decided accordingly; specially as recourse to ordeals is not permitted in the case of disputes relating to land.

[431] 'If the neighbours depose falsely in connection with disputes relating to dykes, each of them should be fined the middle amercement'—(attributed to *Manu*).

'*Dykes*'—i.e. Boundary-dykes.
Says *Kātyāyana*—

[432] 'One village is the *neighbour* of another village, one field is said to be the *neighbour* of another field and one house is the *neighbour* of another house; because each of these pairs surrounds the other on all sides.'

'Each of these surrounds the other on all sides';—i.e. when one village surrounds another village on all sides,—then that village is to be treated as the 'witness' in regard to the boundary of that other village; similarly between field and field, and between house and house.

[433] 'In a case where people living in the neighbouring village have subsequently gone abroad—to another place,—they are called by the sages 'natives' (*maulas*) of their former habitation, because they were born there.'

Says *Nārada*—

[434] 'Where there are no knowing witnesses, nor any marks, the King shall determine the boundary between the two villages, according to his own fair judgment.'

Bṛhaspati (19.19–23)—

[435] 'When a piece of land has been taken from one village and given to another,—either by a large river or by the King,—what should be the decision in this case ?—The land abandoned by a river, or granted by the King, belongs to him to whom it has been given.

[436] 'If it were not so, there would be no acquisition among men, through the King or through luck.—Gain and Loss and also Life itself, among men are dependent upon Fate and on the King; therefore in all affairs, what has been effected by these should not be disturbed.

[437] 'When a river has been fixed as the boundary between two villages, —however small it might become through use or fall,—if any one disturbs it, he deserves to be punished.

[438] 'There may be erosion by a river on one side, and consequent gain of land on the other; this loss or gain should not be disturbed.'

That is, the new land that has accrued on one side, by the erosion of the land on the other side, should belong to the owner of the former.

[439] 'When land is carried away by the swift current of a river, overflowing a tilled piece of land,—its previous owner shall recover it (when the flood has subsided).'

That is, even though the river may have run over the whole plot, it remains the property of its previous owner.

[440] 'When land has been taken away by the King from one person, through anger or greed, or under a fraudulent pretext,—and bestowed

upon another more qualified person as a mark of favour,—such a gift shall not be regarded as valid.'

[441] 'When, however, a piece of land is being enjoyed by a person, without legitimate title to its ownership,—if that land is taken from him and given to another person,—such a gift shall not be disturbed.'

What is meant is that if the boundary has been fixed by the King under the influence of anger and other passions,—it shall be set aside: otherwise, it shall be maintained.
Says *Yājñavalkya* [2.154]—

[442] 'Orchards, Temple-grounds, Tanks and Wells, Gardens and Houses, and also Rain-water Drains,—in regard to the boundaries of these also, these same rules are applicable.'

And *Manu* (8.262)—

[443] 'In the case of fields, wells, tanks, gardens and houses,—the decision regarding boundaries is dependent on neighbours.' *

Bṛhaspati (19.24)—

[444] 'If a house, a water-reservoir, a shop or such thing, has been used by a man in a certain manner, ever since the time of the foundation (of the village or town),—his possession shall not be disturbed.' †

[445] 'A window, or water-drain, or projections, or platforms, or a four-doored room, or eaves,—if they have been there from before,—shall not be disturbed.'

'*Praṇālī*' is water-drain;—'*niryūhavedikā*' is projecting platform;—'*chatuḥshāla*'—a room with four doors;—'*syandanikā*'—ends of roofs, eaves; popularly known as '*ohārī*' (?).

[446] 'The Plinth, the Water-drain, the Exit and the Window,—these shall not be encroached upon; one who encroaches upon the water-drain or the foundation shall be punished.'

[447] 'These, however, shall not be added afresh after the foundation (of the village).—One shall not erect an opening or a water-drain towards the house of another person.'

'*Mekholā*'—is the basic plinth.—'*Bhrama*'—is water-drain.— *Niṣkāsa*'—is the way to go out, exit.—'*Na uparodhayet*'—one shall not encroach upon.—'*Dṛṣṭipāta*', 'opening', is *window*.
Says *Bṛhaspati* (19.26)—

[448] 'A latrine, a fire-place, a pit, or a receptacle for leavings should never be set up very close to the wall of another person.'

'*Varchaḥ-sthāna*'—is the latrine.—'*Atyārāt*'—very close.

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* This text has been added with a view to preclude the evidence of hunters and foresters, etc.—says *Medhātithi*.

† This refers to the courtyard, gates and windows and other details appertaining to the house; these shall not be disturbed by the neighbours;—'*ever since, etc.*'—this shows that later additions may be disturbed if objected to by the neighbours—(*Smṛtichandrikā*, p. 550).

And *Kātyāyana*—

[449] 'The Privy, the Urinal, the Water-reservoir and the Oil-press—as also the Fire-place and the Pit—should be set up at least two cubits removed from the wall of another person.'

'*Chakra*' stands for the Oil-press and such other structures.
Bṛhaspati (19.27)—

[450] 'The passage by which men and cattle come and go without let or hindrance is called a *Path*; and this shall not be obstructed by any one.'

Kātyāyana—

[451] 'When trees have grown on the boundary-line, the flowers and fruits growing on them should be made over to the owners of the two plots.'

The construction is—'*dvayoḥ kṣetrayoḥ svāmiṣu*', 'to the owners of the two plots'.

[452] 'If trees growing in one man's plot have their branches spreading over another man's plot, that man should be regarded as the owner over whose plot they (the branches) have spread.' *

'*Saṃsthitāḥ*' is to be taken with '*shākhāḥ*', branches.

[453] 'If a man, except under abnormal circumstances, throws unclean things on the public road, he should pay a fine of 2 *Kārṣāpaṇas* and clean the road of the impurities'—(*Manu* 9.282).

[454] 'If it is done by a man in distress, or by one very old, or by a pregnant woman, or by a child,—these shall be reprimanded, and the road is to be cleaned, such is the law'—(*Manu* 9.283).

'*Paribhāṣaṇam*', 'reprimand'—i.e. such words as 'Don't do this again', —without any fine.
Viṣṇu (5.106-107)—

[455] 'If one throws bones or rubbish on the path, or near gardens and water-reservoirs, he should be fined 100 *Paṇas* and should remove the filth.'

'*Vyutkara*' is *rubbish*,—popularly known as '*gondala*'.—What is meant is that if one throws urine, ordure and other filthy sweepings on the public road or near a water-reservoir, he should be fined 100 *Paṇas*.—What *Manu* has said (under Text 453 above) regarding the penalty consisting of 2 *Paṇas*, —is meant for cases where the quantity of rubbish thrown is not very filthy; hence it is not inconsistent with the present text (455).†—He should also remove the filth.
Says *Kātyāyana*—

[456] 'If one spoils a tank, a garden, or a place of pilgrimage, by throwing unclean things,—he should be made to cleanse it and also be fined the first amercement.'

* With the exception of *Vivādachintāmaṇi* and *Vivādaratnākara* (p. 223)—nearly all other writers are agreed in taking the text to mean that 'that man is the owner in whose plot the *tree* stands'.

† The printed edition reads '*tadanatishayitasāmarthyādinā*', which is evidently wrong; the right reading is supplied by Ma—'*tadatishayitamalatyāge*'; which is supported also by the explanation provided by *Vivādaratnākara* (p. 222).

That is, the cleaning should be got done by the defiler and he should be fined 150 *Paṇas*.

This applies to cases where the defiling has been done repeatedly.

Says *Manu* (8.264)—

[457] 'If a man appropriates, by means of intimidation, a house or a tank or a garden or a field, he shall be fined 500; if he does it through ignorance, the fine shall be 200.'

That is, if a man arouses fear in the mind of the owners of the houses, and thereby appropriates the house and other things, he should be fined 500; if, however, he appropriates it under the misapprehension that it belongs to him, the fine shall be 200.

Says *Vṛddha-Manu*—

[458] 'If a man, through arrogance, demolishes the boundary set up between two villages, he should be fined 200.'

[459] 'For cutting a boundary-dyke, for encroaching upon a boundary, and for taking away a field,—one should suffer the middle and highest amercements'—(*Yājñavalkya* 2.155). *

'*Maryādā*'—in the form of dyke and such things;—'*Sīmā*'—boundary as marked by trees and such things.

Shaṅkha—

[460] 'If one cuts a dyke between two fields, he should be fined 108; on encroaching upon a boundary, 1,008; on taking away the water for a field, 108.'

'*Aṣṭashatam*', 'eight more than a hundred'; similarly '*aṣṭasahasram*' means 'eight more than a thousand'.—'*Kṣetrodakam*'—the water needed for the cultivation of a field.

Says *Nārada* (16.17)—

[461] 'The erection by a person of a dyke in the middle of another man's field is not forbidden,—if it is conducive to considerable advantage and only trifling loss. Advantage is always desirable, even at some cost.'

That is, if a dyke in the middle of someone's field is conducive to great advantage to the owner of the field,—and the disadvantage is only slight,—then its erection should not be forbidden by the owner of the field.

Says *Yājñavalkya* (2.157)—

[462] 'If a man erects a dyke in another man's field, without having informed him,—any produce that may be due to that dyke shall go to the owner of the field, or, failing him, to the King.'

That is to say, if a dyke has been erected by someone in a field belonging to another person,—without his permission,—the larger produce secured to other persons, by reason of that dyke, shall not go to the person who

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* In this text as found in *Yājñavalkya* (2.155), the reading is '*adhamottama-madhyamāḥ*', and the meaning as explained by *Aparārka* and *Mitākṣarā* is that—'for cutting the boundary-dyke, the penalty is the lowest amercement,—for encroaching upon a boundary, the penalty is the highest amercement,—and for taking away a field, the penalty is the middle amercement'.

According to *Arthashāstra* (3.9)—the penalty for cutting a boundary-dyke is a fine of 24 *Paṇas*.

erected that dyke; it shall accrue to the owner of the field; or, in his absence, to the King.

Cultivated and Uncultivated Lands

On this subject, says *Nārada*—

[463] 'If the tenants are either disabled, or dead, or lost,—if someone else should cultivate the field without hindrance, he shall take the produce of that cultivation.'

'Disabled'—without necessary funds.—'Lost'—left the country.—'He'—i.e. the man who has cultivated the field. '*Kṣetram*'—i.e. the land lying waste.

[464] 'While the field is being thus cultivated, if the original tenant happen to return, he shall pay the whole expense incurred in cultivating the waste land and then recover possession of the land.'

'*Khilopachāra*' is the compensation for the money and labour spent over the cultivation of the land.
Kātyāyana—

[465] 'If the original holder is unable to pay the expenses incurred in the cultivation of the waste land, the man who has cultivated it shall take the produce of the land, less by its eighth part; it shall go on like this for eight years; after which the land reverts entirely to the original holder.'

That is, out of the land, the former owner shall get the eighth part, and the cultivator shall get the seven parts; this will go on for eight years; after that the former owner shall recover the whole land, without paying any compensation for the expenses incurred in the cultivation.
This applies to the case of waste lands the cultivating of which is extremely difficult.

[466] 'If the land is left uncultivated for one year, it is regarded as *half-waste*; if for three years, it is *waste*; if for five years, then it is as good as a *forest*'—(*Nārada* 11.26).

That is, if the land is not cultivated for one year, it is 'half-waste'; if it lies uncultivated for three years, it is 'waste'; if it is left uncultivated for five years, it becomes a *forest*.

Bṛhaspati (19.29)—

[467] 'When a man has taken a field on lease, he shall carry on the sowing, fencing and reaping of the harvest. If he fails to do this, he should be made to make good to the landlord the value of the estimated average annual crop.'

'*Shadaḥ*' is crop.—'*Madhyam*'—average, of the produce.
Vyāsa—

[468] 'After having taken a field on lease, if the lessee fails to cultivate it, or get it cultivated, he should be made to pay the value of the estimated produce to the land-owner, and an equal amount to the King as fine.'

What is to be given in what sort of field has been thus declared—

[469] 'If the land has been lying waste for a long time, the lessee shall pay the value of the tenth part of the produce; if the land is one that has been under cultivation, the value of the eighth part of the produce; if the land has been prepared, the value of the sixth part of the produce' —(*Vyāsa*).

All this refers to the average of the produce; as declared by *Bṛhaspati* (Text No. 467 above). Hence in the case of a field which is like a 'forest', the tenth part of the average produce is payable; in that of a field which is 'waste', the eighth part; in that of the field which is 'half-waste' the sixth part,—should be made payable to the land-owner by the man who has taken the lease of the land and allowed it to run waste.

With reference to a case where a man sows seeds in another man's field, without that man's permission,—*Manu* says as follows—

[470] 'If persons, possessing no fields, but having seeds, sow these in fields belonging to others, they never obtain the grain of the crop that is produced'—(9.49).—'If the seed, carried away by rain or wind, germinates in a soil,—that seed belongs to the owner of the soil, and the owner of the seed does not receive the produce'—(9.54).

And again—

[471] 'One who sells what is not *seed*, or picks out the seed, or encroaches upon boundaries * should suffer mutilation'—(9.291).

Protection of Crops

Says *Yājñavalkya* (2.166-167)—

[472] 'Land should be reserved for Pasture, either according to the wish of the villagers, or according to the land that may be available, or according to the orders of the King.—Between the village-habitations and the cultivated lands, there should be left a belt of uncultivated lands, to the extent of a hundred "bow-lengths" in width; two hundred "bow-lengths" round a market-town,† and four hundred "bow-lengths" round a city.'

The '*Kharvaṭa*' is superior to the *village*, but inferior to the *city*.—'*Bow-lengths*'—i.e. a measuring rod four cubits in length.

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* *Medhātithi* explains '*maryādābhedaka*' as 'one who transgresses the rules and practices sanctioned by the Scriptures and by usage.—'*Not seed*'—i.e. seed incapable of germinating.—'*Picks out the seed*'—i.e. picks out the sound seeds from the unsound ones, and sells the latter as sound; or it may mean that one picks out, from the fields, the seeds that have been sown by others and takes them away.

† The word in the original for this settlement is '*Kharvaṭa*'; it has been defined by *Madanaratna* as 'a village inhabited by cultivators and artisans';—by *Aparārka* as 'a group of households larger than a village and smaller than a city'; *Mitākṣarā* and *Mādhavāchārya* describe it as 'a village abounding in thorny trees'—as explained by *Bālambhaṭṭa*.

What is meant is that, either according to the wishes of the inhabitants of the village, etc.,—or in accordance with the land that may be available,—or according to the orders of the King,—land should be reserved for the grazing of cattle; and the extent of this land shall be 400 cubits in the case of the village,—double that size in the case of a large village,—and quadruple that size in the case of the city.

And *Manu* (8.237)—

[473] 'Around a village there should be a Pasture-ground, 400 "bow-lengths" or 3 "stick-throws" in width; and three times this round a city.'

'*Nagara*'—i.e. a village which is slightly less than 'city'.

[474] 'If cattle damage the unfenced crops therein, the King, in that case, shall not inflict any punishment on the keepers of the cattle.'

*'*Sampāta*' is 'throw of the stick'. '*Tatra*' (in Text 474)—within the said village Pasture-land.

Says *Viṣṇu*—

[475] 'In the case of a field situated on the roadside, or the village or near the land reserved for cattle,—no blame attaches to any one (for cattle-grazing); nor in the case of an unfenced field, if it is for a short time'

'*that the cattle has grazed*',—this has to be added.

What is meant is that if a field is situated close to the roadside, or to the village, or to the Pasture-land,—and it is not fenced,—then, in the event of the cow or other cattle grazing on the growing crops *for a short time*, no blame attaches to the keeper; and blame does attach to him if the grazing continues for a long time; as this indicates the dishonest motive of the keeper; as declared by *Yājñavalkya* (2.162)—

[476] 'In the case of a field situated on the roadside, or close to the village, or to the Pasture-land—no blame attaches to any one (for damage done), if it has been done unintentionally; in the event of its being done intentionally, the man responsible for it deserves to be punished like a thief.'

'*Vivīta*' is ground left for the roaming about of cattle.

Says *Manu* (8.241)—

[477] 'In the case of other fields, the cattle-keeper shall be fined a *Paṇa* and a quarter. In all such cases, the crop damaged shall be made good to the cultivator;—such is the rule.'

'*Other fields*'—i.e. those situated at a distance.

Special penalties have been prescribed in reference to special kinds of cattle.

Says *Shaṅkha-Likhita*—

[478] 'If a cow grazes the crops at night, her owner shall be fined 5 *Māṣas*; if during the day, 3 *Māṣas*; if for one *muhūrta* (short time), 1 *Māṣa*; if the field is close to the village, there shall be no punishment.'

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* A stick should be thrown out with great force; up to the place where it falls it is one 'stick-throw'; from that point it should be thrown again; when this has been done three times. that shall represent the width of the Pasture-land—(*Medhātithi*).

Around the village, a plot of land 100 'bow-lengths' in width shall be fenced round by means of pillars; and this plot shall be used as Pasture-land for cattle'—(*Arthashāstra* 3.10).

The '*Māṣa*' meant here should be taken as the *Silver* one; on account of the following declaration of the *Bhāṣyākāra*—

[479] 'In connection with Fines, the *Māṣa* meant is that of *Gold*; but in connection with cattle-grazing, it is meant to be of silver.'

And this 'silver *Māṣa*' contains 2 silver *Kṛṣṇalas*; as declared by *Manu* in the following text—

[480] 'Two *Kṛṣṇalas* (guñjā-berries) of equal weight constitute the *silver Māṣa*'—(8.135).

'*Grazes the crops at night*' (in Text No. 478 above) means 'if it grazes to her full satisfaction'; the fine in this case is to be 5 *Māṣas*; while during the day, if she has grazed to her full satisfaction, the fine is to be 3 *Māṣas* only; and if during the day she grazes only for a moment, the fine is to be only 1 *Māṣa*;—if she grazes in a field close to the village, then there is to be no punishment.—All this fine is to be imposed upon the owner of the cow; as it cannot be inflicted upon the animal itself.

Says *Kātyāyana*—

[481] 'The cow should be made to pay the fine of a *quarter Paṇa*; the buffalo, *two quarters*; similarly the fine for goats and sheep and calves, the fine has been declared to be *a quarter*.'

The '*Paṇa*' meant here is the *Kārṣāpaṇa*.

Gotama—

[482] 'In the case of the Cow, the fine is to be 5 *Māṣas*; 6, in the case of the Camel; 10, in the case of the Horse and the Buffalo; 2 each in the case of the Goat and the Sheep.'

Shaṅkha-Likhita—

[483] 'In the case of the young ones of all animals, the fine is to be one *Māṣa*'.

Says *Nārada* (11.34)—

[484] 'When cattle lie down in the field, the fine is to be double; when they remain there, it is to be quadruple; for those who graze the cattle openly, the thief's punishment is what has been prescribed by the wise.'

'*Sannānām*', 'lying down'—i.e. when they lie down tired after grazing; —'*vasatām*'—grazing and remaining in the field throughout the night;—'*graze the cattle openly*'—i.e. let the cattle graze there by force, even in the presence of the owner of the field.

Nārada again—

[485] 'When the crops have been entirely destroyed to the very roots, the owner of the field should receive the produce, the keeper of the cattle should be let off after beating and a fine should be imposed on the owner of the cattle.'

'*Vadha*' here stands for *beating*.

Viṣṇu—

[486] 'In all cases,—be the cattle accompanied, or not accompanied, by the keeper,—the value of the damaged crops should be paid to the owner (of the field).'

That is, when cattle has grazed the crops, the owner of the cattle should be made to pay the value of the damaged crops to the owner of the crops, and also a fine to the King.

Says *Nārada* (11.38)—

[487] 'When a man claims damages for crops consumed by cows, that quantity of grain should be given to him which has been consumed, as estimated by the neighbours.'

[488] 'The ears of the crops, or the grains, shall be given by the owner of the cows to the cultivator of the field,—such is the penalty prescribed for the damaging of crops.'

'*Gavatram*'—are the ears or sheaves of the crop.—'*Gomin*' is the owner of the cows.—He should give, to the owner of the field, either the corn-sheaves, or the grain itself.

Though the owner of the crops is entitled to receive this compensation, he should not accept it; as it leads to hell; as declared by *Ushanas*—

[489] 'If a man claims compensation for what has been consumed by cows, his Fathers eat not out of his hands, nor do the denizens of the Heavens.'

During the time that the cattle is in charge of the keeper, the fine (for mishaps) is to be inflicted on the keeper; at other times, on the owner. On this point, the law, in brief, is as follows—

Viṣṇu—

[490] 'In the case of the cow being without the keeper, the fault lies with the owner; in that of its being accompanied by the keeper, it lies with the keeper.'

The exception to this has been laid down by *Nārada*—

[491] 'No blame attaches either to the keeper or to the owner of the cattle, —if he (the keeper) has been seized by the King or by a crocodile, or struck by lightning, or bitten by a serpent, or fallen from a tree, or attacked by a tiger or other wild animals, or oppressed by diseases.'

And *Yājñavalkya*—

[492] 'The public breeding bull, the dedicated cattle, the newly-calved cow, the strayed cattle which have no keeper, or those that have been perturbed by the King or by God,—these should be set free.'

'*Mahokṣa*' is the breeding bull.—'*Dedicated*'—to some deity.—'*Sūtikā*'—newly-calved.—'*Āgantukā*'—which has come from another village, or strayed away from its herd, and as such has no keeper in charge.—Those that have been stampeded, being frightened by the sight of an army marching, or by the hearing of loud thunder.—If cattle graze a field under these conditions, no blame attaches to any one. This is what is meant by the text.

Says *Manu* (8.242)—

[493] 'In the case of a cow within ten days of her calving, or of public bulls, or of dedicated cattle,—whether these be with or without the keeper,—no punishment shall be inflicted; so *Manu* has declared.'

'*Public bulls*'—breeding bulls.

Says *Ushanas*—

[494] 'Elephants and horses are not to be penalised, as they serve to protect the people. Nor are the following to be penalised—one-eyed and lame

cattle, the branded bull, the strayed cow, the newly-calved cow, the cow that is in the habit of running away; also cattle taking part in rejoicings or at the time of the performance of a *Shrāddha.*'

'*Horses*'—those belonging to the King; as these alone serve to protect the people.—What has been declared by *Gotama* (under Text No. 482) regarding the fine being ten *Paṇas* in the case of 'Horse and Buffalo', is meant for the Horse belonging to Traders and others; hence there is no inconsistency between that text and the present one.—'*Kuṇṭha*' is lame; what is really meant by the terms 'one-eyed' and 'lame' is the entirely disabled animal.—'*Branded Bull*'—branded with the mark of the Trident and such things.—'*Vyabhichāriṇī*', which is very prone to running away. In the *Pārijāta* however, the reading adopted is '*abhisāriṇī*', which is explained as 'eager to be mated'.

Shaṅkha—

[495] 'Also small animals, and uncontrollable horses, mules and horses.'

'*Uncontrollable*'—whose control is impossible.—'*Ashvatara*' is what is known as '*veshavī*' (v.l. '*vesharī*) [?].

Kātyāyana—

[496] 'In the case of cattle of all classes,—high, low and middling,—being beaten (by someone),—if the owner of the cattle makes a complaint,—a fine should be imposed';—

'on the man who beat them'—this has to be added.

An exception to this has been laid down by *Bṛhaspati*—

[497] 'If cattle trespass into a cultivated field, or a garden, or an enclosed Pasture-land, or a house, or among a herd of cattle,—they should be caught and beaten;—so says *Bṛhaspati.*'

That is, if cattle trespass into a House and other places, no blame attaches to one who beats them and captures them.

CHAPTER XI

Verbal Assault (Abuse and Defamation)

On this subject, says *Nārada* (15.1)—

[498] 'An offensive statement, couched in violent and foul language, in regard to the native country, caste, family and so forth is called *Verbal Assault* (Abuse).'

'*Ākrosha*' is violent loudness;—'*nyaṅku*' is foulness; the offensive statement that is couched in such violent and foul language is *Verbal Assault* (Abuse).—This is the general definition of *Abuse*. This is the opinion of the *Mitākṣarā* also.—All the other explanations of this text are improper; as under none of those explanations could the text constitute a general definition of *Abuse*.

He goes on—

[499] '*Abuse* again is of three kinds—(*c*) Harsh, (*b*) Vulgar, and (*c*) Virulent; the penalty for these also is in the same order of seriousness.—(*a*) The *Harsh* Abuse is accompanied by reproach;—(*b*) the *Vulgar* Abuse is that couched in indecent words;—(*c*) the wise men call that Abuse *Virulent* which reproaches one with mortal sin.' *

'*Nyaṅku-sañjitam*'—accompanied by words expressive of the private parts.

Bṛhaspati—

[500] '*Assault* is of two kinds—(*a*) Abuse and (*b*) Hurt;—each of these is classed under three heads; and the penalty for these also has been declared to be of three kinds.—

[501] 'When offensive language is used against a man's country, times [v.l. *village*,] family and so forth,—or an immoral act is attributed to him without any substance,—it is Abuse of the first kind.

[502] 'When one uses offensive language in connection with another's mother or sister,—or attributes to him a minor sin,—it is called the second kind of Abuse, by people learned in the Scriptures.

[503] 'When one charges another with having taken forbidden food or drink, —or attributes to him a heinous sin,—or exposes his vital vulnerable points,—it is Abuse of the worst kind.'

'*Without substance*'—without foundation, hence *false*;—this goes with all the three definitions. Hence what is meant is that the *false* allegation of an immoral act constitutes the first form,—the *false* allegation of a minor sin constitutes the second form,—and the *false* allegation of a heinous sin constitutes the third form, of *Abuse*.

[504] 'When two persons abuse each other, their punishment shall be equal if they are equal in status; if one is superior to the other, the

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* This same three-fold division is found in *Arthashāstra* (3.18) also.

punishment of the inferior shall be double, and that of the superior shall be half '—(*Bṛhaspati* 20.5).

Yājñavalkya (2.206)—

[505] 'For abusing an inferior person, one shall be fined *half*. If one abuses ladies of other families or persons superior to himself,—he shall be fined double.'

The 'half' shall be in accordance with the gravity of the offence [i.e. the *half* meant is the half of the fine prescribed for Abuse in general]. The heaviness or lightness of the fine shall depend upon the caste and qualifications of the persons concerned.

Kātyāyana and *Ushanas*—

[506] 'If the reviler offers an apology, saying—" What I said was in ignorance, or through carelessness, or in an exuberance of joy or of love; and I shall never say it again ",—the fine imposed upon him shall be only half of what has been prescribed.'

Bṛhaspati (20.6)—

[507] 'When persons of equal caste and qualifications abuse each other,—the fine, as prescribed in the Scriptures, shall be twelve *Paṇas* and a half.'

When a minimum amount has been laid down as the fine to be imposed in a case of Abuse, it is to be half of that in the case of Abuse directed against an inferior person; and it shall be double that amount if the Abuse is directed against a superior person.—This is what has been declared by *Bṛhaspati* in the above text, which thus means that—for abusing a man of the same caste, the fine shall be 12½ *Paṇas*;—for abusing a man of inferior caste, it shall be six *Paṇas* and one *Kākinī*. So also for abusing one who is one-eyed or lame and so forth.

Yājñavalkya (2.205)—

[508] 'If one reproaches another with the words—*May you have recourse to your own sister or mother*,—he should be made by the King to pay a fine of 25 *Paṇas*.' *

Says *Manu* (2.267)—

[509] 'For abusing a *Brāhmaṇa* the *Kṣattriya* should be fined 100; the *Vaishya*, 150 or 200; the *Shūdra* should suffer immolation.'

'*Adhyardham*' is a hundred and fifty.—'Immolation' is *Beating*.†

[510] 'For abusing a *Kṣattriya*, the *Brāhmaṇa* should be fined 50; for abusing a *Vaishya*, 25; and for abusing a *Shūdra*, 12 '—(*Manu* 8.268).

The terms '*vaishye*' and '*shūdre*' are to be construed as—'when these are abused'.

[511] 'As between the *Brāhmaṇa* and the *Kṣattriya*, the penalty shall be apportioned by the wise man in the following manner :—For abusing the *Brāhmaṇa*, the *Kṣattriya* shall be fined the *first amercement*; and for

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* *Aparārka*, *Mitākṣarā* and others read this text differently as '*Abhigantāsmi bhaginīm mātaram vā taveti cha*'.

† According to *Medhātithi*—Beating, cutting off of the tongue,—even actual death,—to be adjusted in accordance with the nature of the offence.

abusing the *Kṣattriya,* the *Brāhmaṇa* shall be fined the *middle amercement.* Similarly between the *Vaishya* and the *Shūdra* '—(*Manu* 8.276-277).

This refers to cases where the *Brāhmaṇa* and the *Kṣattriya* have indulged in Abuse alleging degrading sins regarding one another.

In connection with the *Shūdra,* says *Bṛhaspati* (20.12)—

[512] 'If a *Shūdra* teaches the precepts of religion, or pronounces Vedic texts, or reviles *Brāhmaṇas,*—he should be punished with the cutting off of his tongue.'

Again—

[513] 'If a *Shūdra* insults a twice-born person with gross Abuse, his tongue should be cut off.—If he mentions his name or caste with scorn, a burning iron-nail ten inches long shall be thrust into his mouth.—If, through arrogance, he teaches *Brāhmaṇas* their duty, the King shall have heated oil poured into his mouth and ears'—(*Manu* 8.270–272).

'Twice-born person'—belonging to any of the three castes.—'Gross'—i.e. alleging mortal sins, says *Kalpataru.*

With reference to twice-born persons, says *Gotama* (12.1)—

[514] 'If a *Shūdra* reviles twice-born persons, or hurts them by striking, his offending limb should be cut off.'

So that, for abusing, the tongue is to be cut off; for hurting the body, the striking limb shall be cut off; that is, that limb should be cut off by which he struck the man.

He goes on (12.4–6)—

[515] 'If he listens to the recitation of the Veda, his ears shall be filled with molten lead; if he recites the Veda, his tongue shall be cut out; if he carries the Veda in memory, his body shall be split up.'

Says *Manu* (8.273)—

[516] 'If a man misrepresents the learning, habitat, caste, occupation, or bodily defects of another person, he should be made to pay a fine of 200.'

This refers to also those cases where the offender is not a *Shūdra.*

The 'misrepresenting' may be in the following words:—'you have not learnt anything'—'you are not an inhabitant of *Āryāvarta*'—'you have not performed any penances'—'you are suffering from skin-diseases';—whoever does this sort of misrepresenting should be punished.

Says *Vyāsa*—

[517] 'For defaming a man by attributing to him a vague offence, one should suffer the *first amercement;* by attributing to him a definite "minor offence", he should suffer the *middle amercement;* and by attributing to him a "heinous offence", he should suffer the *highest amercement.*'

The 'first, middle and highest amercements' are to be taken respectively with the three kinds of defamers; who are to be fined accordingly.

Says *Nārada* (15.30)—

[518] 'If a man reviles the King who is firm in the discharge of his duties, he becomes absolved from the sin by the cutting off of his tongue and by the confiscation of his entire property.'

And *Yājñavalkya* (2.301)—

[519] 'If a man says what is disagreeable to the King,—or defames him,—or divulges his secrets,—he shall be banished after his tongue has been cut off.'

Ushanas—

[520] 'In cases where no penalty has been specifically prescribed by the high-souled ones,—due punishment shall be inflicted after thorough consideration of the offence.'

This has been explained by me in detail in the *Nītichintāmaṇi*.

CHAPTER XII

Assault and Hurt

On this subject, says *Bṛhaspati*—

[521] 'Throwing of ashes, etc. and striking with the hand, etc. constitute an Assault of the First Degree; for which a fine of one *Māṣa* is to be inflicted. —This is the penalty that has been prescribed for cases where the parties concerned are of equal status.—If the Assault has been made against the wife of another man, the fine shall be double of the former; and if it has been against a person of superior status, the fine shall be treble of it.'

The '*striking*' meant here is only the raising of hands in a threatening attitude.—'*Of equal status*'—as regards caste and other qualifications.—'*Māṣika*' here stands for a silver-piece weighing one *Māṣa*.

With reference to *touching*, says *Yājñavalkya* (2.213-214)—

[522] 'Between persons of equal status,—(*a*) for the throwing of ashes, mud or dust, the fine shall be 10 *Paṇas*; (*b*) for defiling with unclean things, phlegm and the like, or touching with the heel, the fine shall be 20 *Paṇas*.—If the person assaulted is another man's wife, the fine shall be double; so also when one who is assaulted is a superior person. —If the person assaulted is of inferior status, the fine shall be half.— If the insulting has been due to such causes as stupidity or intoxication and the like, no punishment shall be inflicted.'

'*Amedhya*', '*unclean things*'—like tears.—'*Pārṣṇi*' is the back of the foot, heel.—'*Niṣṭhyūta*'—the phlegm spat out of the mouth.—'*Moha*', 'stupidity'—want of knowledge.—'*Mada*', 'intoxication'—due to wine and such things; the phrase 'and the like' includes insanity and so forth.

Says *Kātyāyana*—

[523] 'If a man touches another man on his lower limbs, with vomit, urine, excreta or such other unclean things,—he shall be fined the quadruple; if on the middle parts of the body, the sextuple; and if on the head, the octuple.'

If one touches a person of equal status with vomit and other things on the lower part of his body, he shall be fined the 'quadruple' of *ten Paṇas* (prescribed under 522 above); similarly for throwing it on the middle and other parts of the body, it is to be 'sextuple' (six times 10 *Paṇas*) and so forth.

Yājñavalkya (2.217)—

[524] 'For pulling one by his feet, hair, clothes or hands, the fine shall be 10 *Paṇas*; for trampling upon one after having bound, pressed and dragged him, the fine shall be 100.'

That is, if a man of equal status is dragged by his feet, hair or clothes, the offender shall be fined 10 *Paṇas*;—while if the same man is trampled

upon with the feet, after having been tied up with strips of cloth and dragged up,—the fine shall be 100 *Paṇas.*

Kātyāyana—

[525] 'For raising the hand against another, the fine imposed should be 12 *Paṇas*; for actually striking with the hand, it shall be double. This is the rule among twice-born men.'

This is applicable to cases where both parties are of equal status.*

Bṛhaspati—

[526] 'When one person raises gravels, stones, or wood-pieces against another, he shall be fined the first amercement; when they mutually strike one another with hands, each of them shall be fined 10 *Paṇas*; if with feet, 20 *Paṇas*.'

For both, it is 10 *Paṇas*, when striking with hands, and 20 when striking with feet; it is 12 when striking with wood-piece and other things.

This also applies to cases where both parties are of equal status.

Says *Viṣṇu* (5.60–65)—

[527] 'If a man raises his hand against another, he shall be fined 10 *Kārṣāpaṇas*; if he raises his foot, 20; if he raises a wood-piece, he shall suffer the first amercement; if he raises a weapon, the highest amercement.—If an inferior person raises a weapon against his superior, he shall be fined 1,000 *Paṇas*.'

And *Yājñavalkya* (2.216)—

[528] 'If men raise hands against one another, they will be fined 10 *Paṇas*; if the feet, 20 *Paṇas*; if a weapon, they shall suffer the middle amercement. This applies to all men.'

That is, when between two *Brāhmaṇas* a weapon is raised against one another, each of them is to be fined 500 *Paṇas*.

Says *Manu* (8.280–283)—

[529] 'If he raises his hand or a stick against one, he deserves to have his hand cut off; if he strikes him with his foot, in anger, he has to have his foot cut off.

[530] 'If a low-born man wishes to sit upon the same seat with a high-born one, he should be branded on the hip and banished; or the King shall have his buttocks cut off.

[531] 'If he spits at the superior, the King should have his lips cut off; if he urinates at him, his penis shall be cut off; if he breaks wind against him, his anus shall be cut off.

[532] 'If he catches him by the hair, his hands shall be cut off, without hesitation; also if he lays hold of his legs, beard, neck or the scrotum.'

All these penalties are for the *Shūdra* as against the *Brāhmaṇa*. The meaning is that if the *Shūdra* insults the *Brāhmaṇa* by throwing upon him the phlegm from his mouth, urine and wind from his anus,—he shall suffer the penalty of having his lips and other limbs cut off respectively.

* Some digests read '*sajātiṣu*' for '*dvijātiṣu*'.

Says *Bṛhaspati* (21.6-7)—

[533] 'When two persons in anger turn their weapons against one another, the middle amercement shall be inflicted upon both; if a wound is inflicted, the punishment shall be determined by experts, in accordance with the severity of the hurt.

[534] 'For striking a man with bricks, stones or sticks, the fine shall be 2 *Māṣas*; if blood flows, the fine shall be doubled by the wise.'

In connection with the actual use of weapons, says *Viṣṇu* (5.66-67)—

[535] 'If a hurt is inflicted without fetching blood, the fine shall be 30 *Paṇas* *; if blood is fetched, 64 *Paṇas*.'

In regard to a case where a serious wound has been inflicted by a weapon, says *Manu* (8.284)—

[536] 'One who bruises the skin should be fined 100; as also one who fetches blood; one who tears the flesh, should be fined 6 *Niṣkas*; and the bone-breaker shall be banished.' †

A *niṣka* is equal to four '*Suvarṇas*'.
Bṛhaspati (21.8)—

[537] 'For bruising the skin, the lowest amercement; for tearing the flesh, the middle amercement; for breaking a bone, the highest amercement; and for killing, the capital punishment.'

'*Pramāpaṇa*' is Death.

[538] 'For breaking of the ear, nose or hand, for injuring the teeth and the feet, the middle amercement shall be inflicted; the double of this when any one of these is entirely cut off.'

'*Patiteṣu*'—when the ear and the rest are entirely cut off from their place.
Says *Kātyāyana*—

[539] 'For cutting off the ear, lip, nose, eyes, tongue, penis or hand,—the punishment shall be the highest amercement; the middle amercement if any of these is only torn;—so says *Bhṛgu*.'

'*Chhedana*', '*cutting*'—entirely *removing from its place*; while '*bhedana*' is *tearing*.
Yājñavalkya (2.219)—

[540] 'For breaking the hand, feet or the teeth,—and for tearing the ear or the nose,—the punishment is the middle amercement; also for breaking a healing wound, and for beating a man till he is nearly dead.'

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* The reading everywhere, also in *Vivādaratnākara* (p. 264), is *30*; but the original in *Viṣṇu-smṛti* has 32; which is what the sense requires.

† This pertains to offences committed among twice-born men themselves, and also between two *Shūdras*.—'Banishment' is an alternative to 'Death'; hence there shall be 'Banishment' for the *Brāhmaṇa* and 'Death' for the others—(*Medhātithi*).

A Hundred is the fine for inflicting a wound more serious than the one contemplated by *Viṣṇu's* text (No. 535 above)—(*Vivādaratnākara*, p. 264).

'*Chhēdana*' is *tearing*.—'*Vraṇodbhēda*'—freshly opening a wound that had healed up. Similarly for beating a man in such a way as to render him as good as dead.—In each of these cases, the fine is 500 *Paṇas*.

Viṣṇu (5.70–72)—

[541] 'For breaking the eye, neck, arm, or ankle,—the highest amercement. If one has broken both the eyes of a person, the King shall never let him go out of the prison; he may make him similar to that person.'

'*Sakthi*' is the place where the end of the leg meets the foot.—'*Similar*' —i.e. just like what he made the other man.

Yājñavalkya (2.303)—

[542] 'One who hurts both eyes of a man, one who follows the orders of the King's enemy, a *Shūdra* who adopts the living of the *Brāhmaṇa*,—for all these the fine shall be 800.'

This is the penalty for—(*a*) one who inflicts such hurt on the two eyes as causes a little pain and is curable;—(*b*) one who carries out the orders of the King's enemies, for the destruction of the King; and (*c*) the *Shūdra* who wears the marks of the *Brāhmaṇa*—such as the wearing of the Sacred Thread and the like,—and makes a living thereby.

When we find several penalties laid down for one and the same offence, it should be explained on the basis of the greater or less amount of pain caused by the hurt inflicted.

As says *Manu* (8.286)—

[543] 'When a hurt has been inflicted on men with the motive of causing pain,—the King shall inflict punishment in accordance with the degree of pain suffered.'

'*Duḥkhāya*'—i.e. with the motive of causing pain.—What is thus meant is that if the hurt has been caused by inadvertence, there shall be no punishment.

Says *Nārada*—

[544] 'By whatever limb a man of a lower caste offends against a *Brāhmaṇa*, that limb shall be cut off; thus alone would he be cleansed of the sin.' *

Nārada again—

[545] 'If a man strikes a King,—even though the latter may have wronged him,—he shall be fastened to a stake and roasted; as he has committed a sin more heinous than a hundred *Brāhmaṇa*-slaughters.'

That is, even when the King has done some wrong, if anyone strikes him, he should be tied to a stake and roasted in fire.

This must be taken as applicable to offenders who are not *Brāhmaṇas*; because of the following specific prohibition—

[546] 'One should never put the *Brāhmaṇa* to death, even though he may have committed all the sins'—(*Manu* 8.380).

Says *Manu* (8.279-280)—

[547] 'With whatever limb a low-born man hurts a superior person, every such limb shall be cut off; such is the teaching of *Manu*.—

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* 'By whatever limb a *Shūdra* strikes a *Brāhmaṇa*, that limb shall be cut off. If he only raises his hand against him, then a fine and compensation. If he only touches him, the fine shall be halved'—(*Arthashāstra* 3.19).

[548] 'If he raises his hand or stick against him, his hand should be cut off; if he strikes him in anger with his foot, his foot shall be cut off.' [See Text 529 above.]

'*Superior person*'—i.e. one belonging to one of the three higher castes. '*Low-born man*'—*Shūdra.*

Again—

[549] 'If a low-born person wishes to sit upon the same seat with a high-born one, he should be branded on the hip and banished; or the King shall have his buttocks cut off'—(*Manu* 8.281). [See Text 530 above.]

'*Branded* '—with iron.—'*Sphicham*'—a part of the buttocks.

Again—

[550] 'If he spits at his superior, the King should have his lips cut off; if he urinates at him, his penis shall be cut off; if he breaks wind against him, his anus shall be cut off'—(*Manu* 8.282). [See 531 above.]

[551] 'If he catches him by the hair, his hands shall be cut off, without hesitation; also if he lays hold of his legs, beard, neck or the scrotum'—(*Manu* 8.283). [See 532 above.]

That is to say—If the *Shūdra,* through arrogance, spits at a person belonging to one of the three higher castes, his lips shall be cut off; if he urinates, his penis shall be cut off; and if he passes wind against him, his anus shall be cut off;—and if he catches hold of his hair or feet or beard or neck or scrotum, his hands shall be cut off.

With reference to the *Shūdra,* says *Āpastamba*—

[552] 'On his seeking to equal his superior in the matter of speaking, walking, bed and seat,—he should be beaten with a stick.'

'*In speaking*'—i.e. speaking at the same time;—'*walking*'—going as if he were equal to him;—'*bed* and *seat*'—sitting along with him.

Kātyāyana—

[553] 'The penalty laid down in the matter of Abuse and Defamation among persons of higher and lower castes shall be inflicted in the same order in the case of Assault and Hurt also.'

Bṛhaspati—

[554] 'When a limb has been injured or broken or cut off, the assailant shall be made to pay the expenses incurred in the recovery, and also to restore whatever he might have taken away in the quarrel.'

'*Samutthānavyaya*'—expense incurred in recovering from the hurt.

Yājñavalkya (2.221)—

[555] 'If several men assault a single man, the punishment of each of the assailants shall be double of that which has been ordained (for a single assailant); and each of them shall restore to the assailed person whatever he may have taken away from him during the quarrel, and also pay to the King a fine double the value of the article taken.'

The 'punishment is double'; and whatever each of them has taken away in the quarrel.*

* *Fine*—this is the punishment for taking away the man's property by force—says *Mitākṣarā.*

Manu (8.229-30)—

[556] 'The Wife, the Son, the Slave, the Servant and the Uterine Brother may be chastised with rope or bamboo-bark, when they have committed a fault;—but only on the back part of the body, and never on the upper part of the body; one who strikes otherwise than this incurs the sin of a thief.'

Yama—

[557] 'One who behaves otherwise than this deserves the prescribed punishment.'

With reference to the Pupil, says *Āpastamba*—

[558] 'If he commits a fault, he should be reprimanded; if it is necessary to inspire fear in his mind, he should be subjected to fasting and water-sprinkling; punishments, when inflicted, should be in consonance with his capacity to bear it; and that too only till the offence ceases.'

'*Reprimand*'—harsh words.—'*Atitrāsa*'—for inspiring fear in his mind.—'*Water-sprinkling*'—pouring water over him;—this is to be done during the winter.—'*Yathāmātram*'—in accordance with the pupil's capacity.—'*Ā nivṛttēḥ*'—i.e. till the cessation of the offence.

Nārada—

[559] 'The Father shall not suffer punishment for an offence committed by his Son; nor is the owner of a dog or a monkey to be punished for any injury inflicted by these,—unless he should have set them to do it.'

Yājñavalkya (2.290)—

[560] 'If the owner of tusked or horned animals does not save the person attacked,—even when he is able to save him,—he should suffer the *first* amercement; and double that amount, if he refuses to help when called for.'

If the owner of the dog or other animals,—even when able to do so,—does not save the person attacked by them,—then he should suffer the *first amercement*; even when requested to remove his dog, if he does not come to the rescue, then he should suffer the *middle amercement*.

Says *Kātyāyana*—

[561] 'In a case where there is no motive or reason indicative of the hurt, the King shall, in the absence of witnesses, have recourse to ordeal.'

That is, when there are no witnesses, recourse should be had to ordeal.

Nārada—

[562] 'He who is the first aggressor is decidedly guilty; he who retaliates is also an offender; but the former shall suffer a heavier punishment.'

'*First aggressor*'—who utters the Abuse first.

Kātyayāna—

[563] 'When a man strikes another with a dangerous weapon, he shall be regarded as guilty and liable to punishment; even though he may have been the first to be attacked.'

'*Dangerous weapon*'—e.g. the Sword.

Bṛhaspati—

[564] 'One who, on being abused, returns the Abuse,—or, on being struck, returns the blow,—or one who strikes an assassin attacking him,—commits no wrong.'

[565] 'When a low-born person abuses a superior person,—the latter should not be prosecuted if he has struck the former.'

'*Low-born person*'—the *Shūdra*;—'*superior person*'—the *Brāhmaṇa* and others.—That same *Brāhmaṇa*, if he strikes that *Shūdra*;—the Genitive ending (in '*tasya*' is in connection with '*himsā*', 'striking');—he shall not be '*prosecuted*'—punished.

Nārada (15.11-12)—

[566]—'A *Shvapāka*, a Eunuch, a *Chaṇḍāla*, one who makes a living by prostitution, one who lives by killing, the elephant-keeper, an Apostate, a slave, or one who has disregarded his teacher and preceptor,—if any of these commit an offence, immediate beating should be the only punishment; and the wise men have declared that there is nothing wrong in beating or hurting these persons.—If these men should insult a superior person, the King shall hand them over to that person, who will punish them; and the King is not responsible for punishing them.—These men are the 'refuse' of humanity; hence their wealth also partakes of the nature of 'refuse' (filth); hence these shall be *beaten*, and never punished with a fine.'

The girl born of a *Kṣattriya* father from a *Shūdra* mother is called '*Ugrā*';—the girl born of a *Shūdra* father and *Kṣattriya* mother is called '*Kṣattā*';—one born from the *Kṣattṛ* father from an *Ugra* mother is the '*Shvapāka*'.—'*Paṇḍa*' is the eunuch, who is sexless.—'*Chaṇḍāla*' in this context stands for one born of a *Brāhmaṇa* mother and *Shūdra* father.—'*One who lives by killing*',—i.e. the fowler, the fisherman and the like.—'*Elephant-keeper*'—who drives elephants.—'*Apostate*' is well-known.—'*Dāsa*' here is the *Slave*.—'*Ghāta*' meant here is *Beating*; and this shall be in accordance with the character of the offence.

Kātyāyana—

[567] 'For the untouchable, the rogue, the slave, the *Mlechchha*, the worst sinners, and those born of the inverse mixture of castes,—the punishment shall be always corporeal, never monetary.'

'*Worst sinners*'—those who have committed very heinous sins.—'*Born of the inverse mixture of castes*'—such as the *Niṣāda* and the like.

Says *Viṣṇu* (5.48 *et seq.*)—

[568] 'One who kills a goat, a horse or a camel,—should have one hand and one foot lopped off;—one who sells bad meat, or kills a domestic animal, should be fined 100 *Kārṣāpaṇas*,—and he should pay the price of the animal to its owner;—one who deprives animals of their masculinity and also one who has killed a wild animal, shall be fined 50 *Paṇas*;—one who kills birds and fishes, 10 *Kārṣāpaṇas*.'

This last penalty is for those who do not make their living by killing birds and fishes.—'*Bad meat*'—such meat as cannot and should not be eaten (such as the flesh of the dog or the jackal).

Says *Manu* (2.285)—

[569] 'In the case of all kinds of trees, the punishment inflicted for injuring them shall be in accordance with their usefulness.'

And *Yājñavalkya* (2.227–229)—

[570] 'In the case of trees with offshoots, and of protective trees, one who cuts off their branch is to be fined 20 *Paṇas*; one who cuts the subsidiary trunks, 40 *Paṇas*; and one who cuts the entire tree, 80 *Paṇas*.—

[571] 'In the case of trees growing on the boundaries of sacred mounds and cremation-grounds, or on a sacred spot, or in a temple,—the fine shall be double (the aforesaid); also for cutting a famous tree.'

[572] 'In the case of a thicket, a clump, a bush, a creeper, a low-spreading plant, a medicinal herb, or a high-spreading creeper, growing on the above-mentioned spots,—if a man cuts them, the fine shall be half of that mentioned before.'

'*Trees with offshoots*'—e.g. the Banyan tree;—'*protective trees*'—the *Pipal* and the like;—'*cuts the entire tree*'—from its very roots.—Thus then, for the cutting of the branch of these trees, the fine shall be 20 *Paṇas*; for the cutting of their subsidiary trunks, 40 *Paṇas*; and for the cutting of them from the very roots, 80 *Paṇas*. Under ordinary circumstances, in the case of the thicket and the rest however, the fine shall consist of 10 *Paṇas*, but it becomes double, if the thicket, etc. that are cut have been growing in the places mentioned.—'*Kṣupa*' is a bush with small branches,—such as the *Shiphā*, the *Shākhoṭa* and the like.

In continuation of the word 'should be punished', says *Viṣṇu* (5.55–59)—

[573] 'The feller of a fruit-yielding tree shall suffer the highest amercement; the feller of a flower-yielding tree shall suffer the middle amercement; one who cuts creepers, shrubs or climbing plants shall be fined 100 *Kārṣāpaṇas*; one who cuts grass shall be fined one *Kārṣāpana*. All these shall make good to the owner the income that they were yielding.'

The word 'shall pay' has to be supplied.

CHAPTER XIII

Theft and Robbery

On this subject says *Manu*—

[574] 'Having truly proclaimed their crimes, in connection with their respective acts, the King shall duly inflict punishment on them, in accordance with the values and capacities.'

'*Tēṣām*', from the context, should be taken as standing for *thieves.*— What is meant is that the King should inflict punishments in accordance with the value of the property stolen.

Bṛhaspati (22.6)—

[575] 'Thieves,—having been traced by the King's officers, through their association or through indicatives or through the possession of stolen goods,—shall be compelled to restore the plunder and shall be punished with punishments prescribed by the Law.'

'*Association*'—with well-known thieves;—'*Indicatives*'—of the thieving profession, such as the implements for breaking holes in walls and so forth;—'*Stolen goods*'—the things stolen;—through any one of these means, having decided that the man concerned is a thief,—the King should compel him to restore the stolen property to its owner, and then proceed to chastise him with such punishment as have been prescribed in the Scriptures.

Says *Manu* (8.302)—

[576] 'The King shall try his best to suppress thieves; by the suppression of thieves is fame and kingdom become augmented.'

[577] 'The King who offers safety to his people is always honoured; ever prosperous is his sacrifice wherein he offers the fee of fearlessness'—(*Manu* 8.303).

[578] 'If a King does not repress thieves and yet receives taxes, his kingdom becomes perturbed and he falls off from heaven'—(*Manu* 9.254).

'*Parihīyatē*' is to be construed with '*sa*' ('he') to be supplied.

Thieves are of two kinds—'open' and 'secret'. Among 'open' thieves are tradesmen and others; and among 'secret' thieves are those who break into houses through holes made in the walls.

In regard to the former (i.e. the 'open' thieves, tradesmen, etc.)—says *Vyāsa*—

[579] 'Traders rob people by tampering with weights and measures, and with accounts and countings, and also by reducing and enhancing the price of commodities; they adulterate superior with inferior goods looking like them; and other cheats even change the commodities (shown and actually sold).'

Yājñavalkya (2.244)—

[580] 'If a trader, through false measures or scales, abstract the eighth part of the commodity, he should be fined 200 *Paṇas*; the fine to be increased or decreased according as the part extracted is higher or lower.'

The particle 'or' implies absence of restriction; hence the meaning is that by whatever trickery, in the shape of false scales and the like, the trader abstracts the eighth part of the commodity that belongs to another person, —he should be made to pay a fine of 200;—if he abstracts the *ninth* part, then the fine shall be 200 less by the eighth part of 200,—if he abstracts the seventh part, the fine shall be 200 *plus* the eighth part of 200.*

Kātyāyana—

[581] 'A dealer who deals with false scales and weights and measures and counterfeits, or by other secret means of fraud,—he should suffer the first amercement.'

'*Pratimāna*'—known as '*parimāṇa*', measures.—The trader dealing with these should be made to pay a fine of 250.

This is meant for cases where what has been abstracted by fraud is the *sixth* part or more †; hence, it is not inconsistent with *Yājñavalkya's* rule (Text 580).

Manu (9.287)—

[582] 'The man who treats equals as unequals in value should suffer the penalty of the first or the middle amercement.'

That is, when a man receives 'unequal' things—i.e. things of superior quality—in place of 'equal' things—i.e. things of common quality,—either in exchange or in value,—he is to be fined 250 *Paṇas*, if the difference is equal to the sixth part,—and 500 *Paṇas*, if the difference is equal to the fifth part or more.‡

Again—

[583] 'If one sells what is *not seed*—or picks out the *seed*,—or transgresses the bounds of propriety,—he shall suffer mutilation as the penalty '—(*Manu* 9.291).

That is—(*a*) one who sells what is not-seed, as seed,—or (*b*) one who takes away by force the field sown by another man,—or (*c*) one who transgresses the custom of the country, or caste, or family, or the commands of the Scriptures or of the King,—he deserves to have his ears and other limbs cut off. §

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* '*Abstracts*'—either while selling or while buying—says *Aparārka*.

† The printed text is corrupt. The right reading is supplied by Ma—*Etachcha ṣaṣṭhāmshakachchhadṃakaraṇapakṣē*'.

‡ In regard to certain substances, it has been ordained that in exchanges, they shall be treated as equal; e.g. Sesamum and Paddy;—if then, having advanced a certain quantity of Sesamum, a man demands and receives a larger quantity of Paddy,—or when, in the act of buying and selling, a man buys Sesamum at a price lower than that paid for Paddy;—or in a case where one man has an upper garment and another man has the lower garment, and both are of equal value,—and yet, knowing the greater need of the former, the latter offers to him the lower garment, not in equal exchange, but at a higher price;—the punishment in all these cases will be as above; to be inflicted on the Buyer as well as the Seller.—The exact amount of the fine to be imposed shall be determined by the value of the commodity concerned—(*Medhātithi*).

According to *Vivādaratnākara* (p. 286), the meaning is somewhat different—If a man is found to receive the same price from a number of persons, but the commodity sold to them is not of the same quality—he is to be fined the lowest amercement.—Or the meaning may be that the fine is to be inflicted if he charges a price higher than what is due. It quotes *Halāyudha*, whose explanation is the same as *Medhātithi's*, but adds also—'the fine is to be imposed if the Seller charges a higher price on finding that the Buyer is in great need of the commodity '.

§ '*Picks out the seed*'—before selling the man picks out all the sound seeds and palms off only the unsound ones; or it may mean 'one who picks out the seeds germinating in another's field, with a view to damage'—(*Medhātithi*).

Bṛhaspati—

[584] 'A trader who sells an article after hiding its defects,—or having adulterated it,—or an old article after repairing it,—shall be compelled to give the double quantity to the buyer and to pay a fine equal in amount to the price of the article sold.'

A thing whose defects have been concealed,—or a commodity adulterated with an inferior commodity,—or an article which has been repaired and renewed by means of rubbing and scrubbing, etc.—one who sells such things shall be made to give to the buyer double the quantity of the commodity sold to him, and also a fine to the King, equal to the price of the thing bought.

Yājñavalkya (2.245)—

[585] 'Medicines, Oils, Salts, Scents, Grains, Molasses and the like,—for adulterating any of these things with inferior stuff, the fine is 16 *Paṇas*.'

That is, when one sells to a man, any of the things mentioned here after mixing it with other things,—he shall be fined 16 *Paṇas*.

The rule laid down by *Bṛhaspati* (Text 584) applies to things of high value, while the one laid down here by *Yājñavalkya* applies to things of small value. Hence there is no inconsistency between the two. *

[586] 'If a trader makes a false declaration regarding quantities,—or evades the Custom-house—or buys and sells fraudulently—he should be made to pay eight times the value'—(Attributed to *Yājñavalkya* in *Vivādaratnākara*, p. 298).

That is, if one falsely declares the quantity of the commodity,—or if when going to sell things, he avoids the Market-place—or if he buys or sells things fraudulently,—he should be made to pay eight times the value of the commodity concerned.

Viṣṇu—

[587] 'One who evades the Custom-house should suffer the confiscation of his entire stock.'

That is, when the man is going to sell and buy things, if he evades the regular market-place, he should be made to surrender his entire stock.—This refers to cases of repeated offence, while that laid down by *Yājñavalkya* (Text 586) refers to the first offence; hence there is no inconsistency between the two.

Shaṅkha—

[588] 'For using false scales, weights and measures, corporeal punishment, or the cutting off of limbs.'

'*Maryādābhēdakaḥ*' explained and translated as 'one who transgresses custom, etc. etc.' may stand for 'one who breaks dikes and dams'.

'*Bījotkraṣṭā*'—No two commentators seem to agree regarding the exact signification of this term. *Vivādachintāmaṇi* has explained it as 'one who takes forcible possession of another man's field'.—*Medhātithi* as 'one who picks out the good seeds and palms off the bad ones' or 'one who damages another man's sowing by picking out the seeds germinating in his fields'.—*Vivādaratnākara* (p. 296) as 'one who takes away, by force, the seed sown in another man's field'.

* *Vivādaratnākara* (p. 297) offers a different explanation:—The penalty here prescribed is for the mere *adulterating*, even though the man may have not actually sold it (such is the view of the *Mitākṣarā* also);—the preceding rule (of *Kātyāyana*) has prescribed the penalty for actually selling the adulterated stuff; hence there is no inconsistency between the two.

That is, one who makes use of false scales and weights, or of false measures,—his head shall be shaved off: one who does so habitually, should have either his ear or some other limb cut off.

Others hold that the actual infliction of the one or the other penalty shall be determined by the high or low value of the transaction involved.

Yājñavalkya (2.240)—

[589] 'One who makes false weighing scales or weights and measures,—one who forges royal edicts,—he who makes false coins,—and also one who makes use of these,—should suffer the highest amercement.'

That is, one who makes false scales, etc., or forges royal edicts, or makes counterfeit coins of copper and other metals,—or one who makes use of these things—shall be made to pay a fine of 1,000 *Paṇas*.

Again—

[590] 'If a professional coin-tester declares a true coin to be false, or a false coin to be true,—he should be made to pay the highest amercement'—(*Yājñavalkya* 2.241).

'*Nāṇaka*' is coin. If a coin-tester, through dishonesty, declares a pure coin to be counterfeit, or a counterfeit coin to be pure,—he should be fined 1,000 *Paṇas*.

In continuation of the term 'highest amercement', says *Viṣṇu*—

[591] 'Also one who sells counterfeits.'

'*Counterfeits*'—such as false (artificial) pearls and such things.

Yājñavalkya (2.249)—

[592] 'If traders combine (*a*) to maintain a price prejudicial to the interests of artisans and artists, or (*b*) to bring about a rise or fall in the prices (fixed by the King),—they should be fined 1,000 *Paṇas*.'

'*Kāru*', 'artisan', is the man who makes images; '*Shilpi*', 'artist', is the painter of pictures. If people combine to bring about a price of things that is very prejudicial to the interests of artisans and artists,—or if they combine to lower or enhance the price of things fixed by the King,—they shall be fined 1,000 *Paṇas*.

Again—

[593] 'Those traders who combine to hamper the sale of commodities brought in by (foreign) traders, by selling up things at an unauthorised price—and also those who sell things at unauthorised prices—should suffer the highest amercement'—(*Yājñavalkya* 2.250).

That is, those traders who, by means of tricks, buy up valuable things at a low price,—and those who sell cheap things at high prices,—should be punished 1,000 *Paṇas*.

Manu (8.399)—

[594] 'A trader who, through greed, exports such goods as have been proclaimed to be the monopoly of the State, or have been forbidden, shall have all his property confiscated.'

That is to say, there are certain things, like elephants and horses, which are fit for the King,—or whose sale and purchase have been forbidden,—if any one, evading this order of the King, should sell such things, the King shall take away all the money that he has made by the said sale.*

* The punishment is meant for one who does the exporting with a view to profiteering; if the articles are being carried for being presented to a foreign King, the punishment shall be severer—(*Medhātithi*).

Manu (8.398)—

[595] 'The King shall take one-twentieth part of the price of saleable commodities, as fixed by men who have experience of Custom-houses and are experts in all kinds of merchandise.' *

Viṣṇu—

[596] 'Out of the proceeds of commodities of his own lands, the King shall take the tenth part as *Customs* Duty; and the twentieth part on those of commodities imported from foreign lands.'

When a trader buys and also sells things within the kingdom,—out of the profit that he has made, the King shall take the *tenth* part; and when he buys in foreign lands and sells in his own kingdom,—out of the profit made, the King shall take the *twentieth* part.—Such is the meaning of the two sentences.

Gotama—

[597] 'On all merchandise, the twentieth part is the Duty; on roots, flowers, medicines, honey, meat, grass and fuel, it is the *sixth* part.'

That is, when the seven articles—roots and the rest—are imported from other lands and sold in one's own country—the King should take the *sixth* part of the profit.

Vashiṣṭha—

[598] 'In regard to the Customs Duty, they quote the following verse—There is no Duty on articles whose value is less than a *Paṇa*; nor on profits made by an Artist; nor on young ones; nor on an Ambassador; nor what has been obtained in alms; nor on the remnants of things stolen; nor from the Vedic Scholar or from the Renunciate; nor on Sacrifice.'

'*Bhinna*'—less; hence the meaning is that there is no Duty leviable by the King on any commodity that is worth less than a *Paṇa*. Similarly there is no Duty to be levied on what has been obtained by a work of art, or on the price of the calf and such young animals; or on what has been obtained through ambassadorship;—or on the remnant of a commodity that has been taken away by thieves;—nor on an article sold by the Vedic Scholar or the Renunciate; nor on what has been got for the purposes of a sacrificial performance.

Viṣṇu—

[599] 'A physician dealing dishonestly towards persons of high classes, should be fined the highest amercement; towards persons of the middle-class, the middle amercement; and towards animals, the lowest amercement.' †

'*Forbidden*'—specially valuable products of the country, which are not allowed to go out—(*Vivādaratnākara*, p. 300).

* According to *Vivādaratnākara* (p. 304), this refers to merchandise bought from foreign lands.

† The physician knows a case to be hopeless, and yet, without communicating this fact to the patient, undertakes his treatment, and the patient dies; in this case the physician should be fined 250 *Paṇas*.—If the death has been due to some act of the physician himself, the fine shall be 500 *Paṇas*.—If he commits a mistake in operating upon a vital part of the body, he shall be convicted under the appropriate section of 'Hurt'—(*Arthashāstra* 4.1).

Vyāsa—

[600] 'Prostitutes, Cheats and Artists place an unwilling and inexperienced person in a difficult position, and extract money from him.'

'*Inexperienced*'—not knowing what is right or wrong.

What is meant is that these persons are confidence-tricksters (and punishable as below).

Bṛhaspati (22.10)—

[601] 'Judges delivering wrong judgments, those who live by bribes, and confidence-tricksters,—all these should be banished.'

Yājñavalkya—

[602] 'Those who live by bribes,—the King shall deprive of all their property and banish.'

Again—

[603] 'The washerman who wears the clothes belonging to other persons shall pay a fine of 3 *Paṇas*; if he sells or hires out or pledges them, or lends them for use, the fine shall be 10 *Paṇas*'—(*Yājñavalkya* 2.238).

'*Avakraya*' is Hiring.—'*Ādhāna*' is Pledging.

Bṛhaspati (22.12)—

[604] 'Those who dishonestly show themselves as wearing a Staff and such other emblems (of religion)—and cause injury to men by deceiving them, —shall be corporeally punished by the King's officers.'

Manu (9.292)—

[605] 'If the goldsmith, the worst of criminals, acts dishonestly,—the King shall have him cut to pieces with razors.'

'*Kaṇṭaka*', 'criminal',—here stands for the *open thief*.—'*Pravartamāna*'—the Present (Participle) indicates *Habit*; hence what is meant, according to some people, is that the said penalty is to be inflicted only when the offence has been repeated.*

Yājñavalkya (2.296)—

[606] 'One who deals fraudulently with gold,—one who sells improper meat, —shall have their three limbs cut off, and made to pay the highest amercement.'

That is, (*a*) one who, by means of herbs, etc. treats baser metals in such a way as to make them look like gold, and then carries on purchase and other dealings through them;—and (*b*) one who sells dog's flesh as deer's and so forth;—both these are to be fined 1,000 *Paṇas* and then be deprived of their nose, teeth and hands.

Again—

[607] 'If one makes a thing which is of inferior quality to appear like one of superior quality,—his punishment should be eight times the price obtained by the sale'—(*Yājñavalkya* 2.246).

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* Considerations of quantity stolen, or caste of the owner, do not enter into this case; repetition alone has to be taken into consideration;—in the case of the first offence, a fine shall be substituted for the slicing of the flesh—(*Medhātithi*).

If a man, by a clever trick, makes a less valuable article look like a more valuable one and palms it off as such on a purchaser,—he should be made to pay eight times the amount of the difference between the price obtained by him and the real price of the article.

[608] 'If a man pledges or sells either a covered article after having altered it, or an ordinary commodity after having artificially made it appear as a valuable article,—he shall be punished as follows:—If the value of the article pledged or sold is less than a *Paṇa*, there shall be a fine of 50 *Paṇas*; if it is full one *Paṇa*, the fine shall be 100 *Paṇas*; if it is two *Paṇas* the fine shall be 200 *Paṇas*; the amount of the fine being increased in proportion to the price of the article concerned'—(*Yājñavalkya* 2.247-248).

'*Samudga*'—casket, cover.—'*Sārabhāṇḍa*'—valuable commodity, like musk.

Thus what is meant is that—by making an empty casket appear as full,—or by making an artificial thing appear as the real thing,—and then pledging or selling it, one becomes subject to the following penalty.

The penalty is described in the next sentence:—'*Bhinna*' is *less*; i.e. less than a *Paṇa*; so that if the article whose value is less than 1 *Paṇa* is represented as existent when it is not there, and then pledged or sold, —similarly when artificial and unreal musk or some such thing worth less than a *Paṇa* is represented as real, and then pledged or sold as such,—the fine shall be 50 *Paṇas*.—When the article is worth 1 *Paṇa*, the fine shall be 100 *Paṇas*; when it is worth 2 *Paṇas*, the fine shall be 200 *Paṇas*; so on and so on the fine shall be 100 times the price of the article concerned.*

Bṛhaspati (22.13-14)—

[609] 'Those who artificially make articles of small value to appear as of higher value, and cheat women and children, shall be fined in proportion to the price obtained.'

[610] 'Those who make and sell false gold or fictitious pearls and corals shall be compelled to restore the price to the purchaser, and to pay double the amount as fine to the King.'

Yājñavalkya (2.178)—

[611] 'In fire, gold remains unconsumed; silver loses 2 per cent in weight; zinc and lead lose 6 per cent; copper, 5 per cent; and iron, 10 per cent.'

'*Gold*'—i.e. pure gold; gold other than pure is liable to be consumed; hence if the gold is pure, it does not lose in weight even if it is kept in burning fire during the whole day and night.—In the case of 100 *Palas* of silver, 2 *Palas* become consumed. Similarly if there are 100 *Palas* of pure lead or zinc, the loss is 8 *Palas*; in 100 *Palas* of copper, it is 5 *Palas*; in 100 *Palas* of iron, it is 10 *Palas* that becomes consumed.—Hence if the trader declares that more than this has been consumed (in the process of manufacture), he should be punished.

Again *Yājñavalkya* (2.179)—

[612] 'Coarse Wool and Cotton-yarn gain 10 per cent in weight in weaving; Wool and Cotton-yarn of middling counts gain 5 per cent; those of the finer counts gain 3 per cent.'

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* '*Altering*'—the man shows to the other party one thing but delivers to him something totally different, and of inferior quality; e.g. having shown a sealed packet as containing pearls, he delivers a packet containing pebbles—(*Mitākṣarā*).

Rough Wool and Cotton-yarn, 100 *Palas* in weight, is made over for weaving,—the resultant cloth is 10 *Palas* more in weight. In the case of Wool and Yarn of the middle count, the excess is 5 *Palas*, and in the case of Wool and Yarn of finer counts, the excess is 3 *Palas*.

Secret Thieves

On this subject says *Manu* (2.276)—

[613] 'If thieves commit theft at night, after breaking into a house, the King shall cut off their hands and have them impaled on a pointed stake.'

And *Vyāsa*—

[614] 'If a thief breaks into a house and takes many things, he should be made to restore the things to the owner and he should be impaled on a stake.'

Bṛhaspati (22.17)—

[615] 'House-breakers shall be compelled to surrender their plunder and impaled on a stake. Highway robbers shall be hung by the neck on a tree.'

House-breakers should be made to surrender to the owner what they have stolen, and then they should be impaled on a sharp stake; while highway men are to be hung on trees; this is the purport of the text.

Bṛhaspati (22.18)—

[616] 'Those who have kidnapped a man shall be burnt on slow straw-fire; and those who have kidnapped a woman shall be burnt either on a bed of red-hot iron or on slow straw-fire.'

'*Kaṭa*' is straw.

This rule should be understood to be applicable to cases of kidnapping of men and women of high families; as declared by *Manu* in the following text—

[617] 'For taking away persons of high families—specially women—and the principal gems, the thief deserves immolation.'

'*Principal gems*'—Emerald and the rest.

Vyāsa—

[618] 'If a man kidnaps a man he should have his hands and feet cut off and then he should be exposed on the road-crossing.'

This is meant for the kidnapping of persons of the middle-class.

[619] 'For kidnapping a man, the penalty prescribed is the highest amercement.'

This is meant for the kidnapping of men who belong to families that are not so good.

[620] 'For kidnapping a woman, the penalty is the confiscation of entire property; and for kidnapping a maiden, it is immolation.'

This is meant for the kidnapping of women of the lower classes.

Manu (8.325)—

[621] 'For stealing cows belonging to *Brāhmaṇas*,—for piercing their nostrils, —and for the stealing of animals,—the thief should be made half-footed.'

[622] 'For the stealing of the larger animals, or of weapons or medicines,—the King shall determine the punishment after considering the time and the purpose'—(*Manu* 8.326).

'*Tūlikā*'—nostril; of this there is '*bhēdana*', piercing.*

'*Time*'—war-time, etc.—'*Purpose*'—riding, etc. Hence if a man steals a horse during war-time, he deserves very heavy punishment.—'*Larger animals*'—such as elephants and horses.†

Nārada—

[623] 'One who steals the larger animals should suffer the highest amercement; one who steals animals of the middle size, the middle amercement; and one who steals the smaller animals, the lowest amercement.'

The exact amount shall be determined in the manner laid down in *Viṣṇu's* text (No. 627 below).

Vyāsa—

[624] 'The stealer of a horse should have his hands, feet and loins cut off, and then killed.'

Yājñavalkya (2.273)—

[625] 'Kidnappers, stealers of horses and elephants and those who strike with violence should be impaled.'

[626] 'Those who break into a store-house or armoury or a temple,—and those who steal elephants, horses and chariots,—these the King shall put to death, without hesitation'—(*Manu* 9. 280).

Viṣṇu (5.77-78)—

[627] 'The stealer of a cow, a horse, a camel or an elephant should have one hand and one foot cut off; the stealer of a goat and such animals should have a hand cut off.'

The elephant and horse meant here are those of the lowest class;—the cow (or ox) meant is an old one,—and the horse also one with no special qualifications; or the time meant is one at which there is no war imminent. It is for this reason that a lighter punishment has been prescribed.‡

Vyāsa—

[628] 'One who steals an animal should have half of his foot cut off by a weapon not very sharp.'

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* *Medhātithi* is responsible for taking the first item in Text 621 as meaning '*the stealing of cows*'. The simple meaning appears to be—'If a man pierces the nostrils of a barren cow among cows belonging to a *Brāhmaṇa*'. This is the explanation that the *Chintāmaṇi* and the *Ratnākara* seem to favour.

† In the case of a sword stolen under normal circumstances, the penalty would be a *fine*; but if it is stolen at the time when an enemy is near at hand and ready to strike, the penalty shall be nothing short of *death*. Similarly in the case of a medicine, if it is stolen at a time when it is most needed for saving the life of a patient, the penalty shall be very much heavier than what it would be if it were stolen at other times—(*Medhātithi*).

‡ The reading of the printed text is corrupt; the sentence should read as—'*Karituragau atyantāpakṛṣṭau vṛddho gauḥ ashvo vā aguṇavān*'.

That is, one of his feet should be lopped off with a blunt spade or some such weapon.

Manu (8.342)—

[629] 'One who chains the unchained, or unchains the enchained,—or takes away a slave, a horse or a chariot,—incurs the guilt of a *thief*.'

If one, with a view to steal them, chains those that are unchained,—or unchains those that have been enchained,—or takes away a slave or a horse or a chariot,—should be punished like a thief. *

Manu (9.277)—

[630] 'Of the man who unties the knot (of cattle), the King should have two fingers cut off on the first conviction; a hand and a foot on the second conviction; and on the third conviction, he deserves to be put to death.'

For the purpose of stealing an animal, if a man unties the knot of the rope with which the animal is tied, his two fingers shall be cut off, on the first conviction; on the second conviction, his hand and foot shall be cut off; and on the third conviction, he should be killed. †

Yājñavalkya (2.274)—

[631] 'The *Lifter* and the *Cut-knot* should have their Hand-pincer cut off.'

That is, one who, with a view to steal cattle, collects them or unties their knots, should have his Thumb and the Forefinger cut off.

Bṛhaspati [*Manu* 8.320]—

[632] 'For one who steals ten *Jars* of grain, there shall be immolation; in other cases, the thief should be made to pay eleven times as much as fine, and also to make good the loss to the owner.'

According to the *Ratnākara* and other authorities—12 *Prasṛtis* (Handfuls) make one *Kuḍava*; 4 *Kuḍavas* make 1 *Prastha* (Seer); and 20 Seers make one *Kumbha* (Jar);—such a 'Jar', by the measure of a man's food, is called '*Khārī*' among *Maithilas*.—A man who steals more than this 'Jarful' of grain should be put to death.—If he steals less than a 'Jarful', he should be made to give to the owner an equal quantity of grain, and also a fine to the King, which shall be eleven times the stolen quantity.

Others, however, have defined the '*Kumbha*' as follows—

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* '*Hantā*' is the reading adopted by *Chintāmaṇi*, which explains it as '*vināshī*'; though the reading in *Manu's* text is '*hartā*', so also in *Chintāmaṇi* MS. *a*, and in *Vivādaratnākara*. This also appears to be the right reading, as the text occurs in the section on '*Theft*'. We have therefore stretched the meaning of the term '*vināshī*', as occurring in the *Chintāmaṇi*, and taken it to mean 'stealer'. The *stealing* or *taking away* of the slave and the horse has been explained by *Medhātithi* in the sense of *enticing away*,—the slave by placing before him the prospect of a happier life, and the horse by presenting before him a mare.—*Medhātithi* notes the explanation provided by 'some one', of the term '*ashvaratha*' as the *chariot-maker*, who is taken as including all kinds of artisans and mechanics.

† '*Granthibheda*' has been variously explained:—The *Mitākṣarā* explains it as *cut-purse*; *Medhātithi* as 'one who opens the knots of bundles of cloth'; he also suggests another meaning—the man who has been caught and tied up, if he loosens the knot of his bondage and tries to slink away'. [See next text from *Yājñavalkya* which contains the same term.]

In some places we find the reading '*angulīḥ*' (Plural) in place of '*angulī*' (Dual); in the former case, all the fingers are to be cut off; under the latter, only two—the Thumb and the Index-finger—according to *Vivādaratnākara*, p. 321 and *Vīramitrodaya*, p. 494.

[633] 'As measures of grain, 4 *Palas* make 1 *Kuḍava*, 4 *Kuḍavas* make 1 *Prastha*, 4 *Prasthas* make 1 *Āḍhaka*, 4 *Āḍhakas* make 1 *Droṇa*;

[634] '16 *Droṇas* make 1 *Khāri*, 20 *Droṇas* make 1 *Kumbha* (Jar), and 10 *Kumbhas* make 1 *Vāha*.'

[635] 'If the cultivator has been at fault, his fine shall be *ten* times his share; half of this shall be the fine imposed if the loss has been due to the fault of the cultivator's labourer, without knowledge of the cultivator himself'—(*Manu* 8.243).

When the owner of the land has made over the land for cultivation to a cultivator, on a definite agreement regarding their respective shares in the produce,—and there is some loss due to the remissness of the cultivator, this latter will have to pay as fine which shall be ten times his share in the produce; if however, the loss has been due to the fault of the labourers employed by the cultivator, this latter has to pay a fine equal to five times his share.—These fines go to the King; as for the owner of the land, he gets his own share of the produce from the cultivator.*

With reference to Wooden Articles, etc. *Nārada* says—

[636] 'In the case of articles weighed by scales,—of those that are measured, and of those that are counted,—if they are of superior value,—the fine shall be ten times the value of the article stolen.'

'*Weighed by scales*'—such as Camphor;—'*Measured*'—such as Grains;—'*Counted*'—e.g. Cardamum and nuts, etc.;—if these are of *superior value*—as compared to the Wooden Box, etc. So the meaning is that if there is stealing of things *weighed*, *measured* or *counted*,—which are more valuable than wooden articles,—the fine shall be ten times their value.

Says *Manu* (8.321-322)—

[637] 'In the case of articles weighed by scales—such as gold and silver,—and also in the case of clothes of good quality—if more than a hundred are stolen, there should be immolation;—

[638] 'if more than fifty are stolen, the hands should be cut off; in other cases, the King shall inflict a fine eleven times the value of what is stolen.'

(*a*) Of gold and silver, if more than 100 *Karṣas* is stolen,—or if of clothes, worth more than a hundred, is stolen,—the stealer shall suffer death. (*b*) If he steals, of the same things, more than fifty, his hands should be cut off. (*c*) If he steals the things worth less than fifty,—he should be made to pay ten times the value of the things stolen.—There is to be restoring of the stolen articles in all the three cases.

Shaṅkha—

[639] 'For stealing gold, silver and gems, corporeal punishment or cutting off of limbs.'

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* The explanation provided by *Halāyudha*, as noted in *Vivādaratnākara* (p. 322) is different—'If there has been loss due to the fault of the owner of the land then he shall be fined ten times of the share due to the King, but if the loss has been due to the fault of his labourers, his fine shall be half of it'.—This is in accordance with *Medhātithi*.

For stealing a small quantity of gold or silver, the thief should be freely beaten; if it is less then his ear should be cut off.*

Viṣṇu (5.87)—

[640] 'The stealer of gems should suffer the highest amercement.'

That is, one who steals gems of the inferior kind is to be fined 1,000 *Paṇas.*†

Shaṅkha—

[641] 'For stealing ploughing implements, 108,—in accordance with the time.'

That is, if one steals the implements, during the times of cultivation, he should be fined 108.

Manu (8.331)—

[642] 'For stealing husked grains, or vegetables, roots or fruits,—there shall be a fine of 100 in a case where the offender is not a relative, and 50 when he is a relative.'

When small quantities of husked grains lying in the threshing yard,—or vegetables, roots or fruits,—are stolen,—and the stealer is not some one related to the owner, he shall be fined 100; but if he is related to the owner, he shall be fined only 50. ‡

Again *Manu* (8.330)—

[643] 'For stealing flowers, green corns, shrubs, creepers, trees and small quantities of unhusked grains,—the fine shall be 5 *Kṛṣṇalas.*'

When there is theft of *Kusumbha,* etc., and of '*green corns*'—i.e. corn-blades in the shape of fodder—and of small quantities of unhusked corn-blades lying in the yard,—or of shrubs, creepers and trees,—there shall be a fine of a *Māṣa* of Gold. §

Vyāsa—

[644] 'For stealing small quantities of grain, or milk, or milk-products,—the thief should be made to make over an equal quantity to the owner, and double of it as fine to the King.'

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* The reading both in the printed Edition and Ma is defective. The explanation provided in *Vivādaratnākara* (p. 324) is as follows—'corporeal punishment'—beating;—'limbs'—ear, etc. This refers to cases where the value of the stolen property is less than 50; and also where the thief is very poor.

† According to *Vivādaratnākara* (p. 324), this refers to cases where the culprit is one on whom the death-penalty cannot be inflicted, but is rich enough to pay a heavy fine.

‡ *Medhātithi* notes several interpretations of this text, based upon the signification of the terms '*sānvaya*' and '*niranvaya*':—(1) '*anvaya*' is affectionate apology, in some such terms as 'I took away these grains because I thought that what was yours was mine also,—if you do not think so, then please take this back'.—(2) '*Anvaya*' is *relationship*; so that if there is no relationship between the owner and the stealer.—(3) '*Anvaya*' is *keeper* or *guard*; so that when the grain is in charge of a keeper, it is '*Sānvaya*'.

The punishment here laid down is for stealing grains from the Threshing Yard; in the case of stealing them from the store-room, the punishment shall be eleven times the value of the grain stolen, as laid down in *Manu* 8.321-322.

§ The '*Kṛṣṇala*' is a coin of various denominations, made of different materials; the exact fine therefore shall be determined in each case by the value and utility of the article stolen; but the Ancients have held that the *Kṛṣṇala* is of gold only—(*Medhātithi*).

Manu (8.326–329)—

[645] 'In the case of the theft of yarns, cotton, fermenting drug, cowdung, molasses, curds, milk, skimmed curd, water and grass ;—

[646] 'of vessels made of bamboos or cane—as also of salts, earthenware, earth and ashes ;—

[647] 'of fish, birds, oils, clarified butter, meat, honey, and other animal-products ;—

[648] 'spirituous liquors, cooked rice and all kinds of fruit,—the fine shall be double the value of the thing stolen.'

This applies to cases where small quantities of yarn, etc. have been stolen.

[649] 'If these things are stolen after they have been refined and are ready for use, one who steals them shall be fined by the King 100;—as also one who steals fire from the house '—(*Manu* 8.333).

The yarns and other things when they have been refined and ready for use.—'*Fire*'—installed according to *Shrauta* or *Smārta* rites.*

Nārada—

[650] 'For stealing wooden vessels, grasses and such things, or earthenware or vessels made of bamboo and cane,—leather-thongs, bones and skins,—vegetables, fresh roots, flowers or fruits,—milk and milk products, salt and oil, cooked food, prepared food, wines, cooked rice,—and all things of small value,—the fine shall be double the value of the thing stolen.'

This refers to cases where large quantities of wood, etc. are stolen.

Manu (8.319)—

[651] 'When one steals the rope and the water-pot from the well,—or damages the water-drinking booth,—he should be punished with a fine of 1 *Māṣa* and should replace the article to its place.'

The term '*rajjughaṭam*' is a *Samāhara-Dvandva* compound. The meaning is that if one steals the rope or the water-pot from a well, should restore it to the well, and should pay the fine of 1 *Māṣa*; which is to be paid also for the damaging of a water-drinking booth.

Viṣṇu—

[652] 'For stealing things which have not been mentioned specifically, the thief [should be made to pay] their price.'

The words 'should be made to pay' has to be added.

Nārada—

[653] 'The penalties that have been ordained in regard to the three kinds of *Violence* may be inflicted in the case of the stealing of the three kinds of things.'

This rule applies to the case of those unspecified things—belonging to the three kinds of (1) high, (2) middle, and (3) low.

* The 'fire' meant here is—(*a*) that kindled for cooking meals, or (*b*) that kindled in connection with the *Agnihotra*-offerings, or (*c*) that which has been set up, without consecration, for the comfort of the cold-stricken poor—(*Medhātithi*).

Kātyāyana—

[654] 'By whatever limb the thief injures a man, that limb the King shall cut off; so that he may not repeat the offence.'

Bṛhaspati—

[655] 'If a man, without permission of the owner, takes away grass or wood or fruit or flower,—he should have his hand cut off.'

This applies to cases where the grass, etc. belong to owners of specially superior classes.

Gotama—

[656] 'No corporeal punishment shall be inflicted on the *Brāhmaṇa*. He may be boycotted, or publicly disgraced, or banished or branded.—If he has no livelihood, he should perform expiations.'

'*Karmaviyoga*', 'Boycotting',—i.e. no business shall be done with a *Brāhmaṇa*-thief;—'*Vikhyāpana*', 'Public Disgrace',—his being a thief being made known by parading him seated on a donkey;—'*Vivāsana*', 'Banishment', —turning him out of the country;—'*Aṅkakaraṇa*', 'Branding'—branding him on the forehead with the mark of a thief.—'*If he has no livelihood, he should perform expiations*';—even when the *Brāhmaṇa* takes to stealing because he has no other livelihood, he shall not be punished with having his hands cut off and so forth; he should be made to restore the stolen goods and to perform the expiatory rite prescribed for stealing.

Āpastamba—

[657] 'In the case of Man-slaughter, Theft, and Taking away of Land [the *Brāhmaṇa* should have his eyes taken out].'

'*Theft*'—here stands for stealing *Gold*.

In the case of these three offences, *non-Brāhmaṇas* have to be killed,—but the *Brāhmaṇa* has to have his eyes taken out. This applies to the case of inferior *Brāhmaṇas*.

Nārada—

[658] 'The property of thieves, being acquired by immoral means, consists of filth; hence the King shall inflict corporeal punishment on them, and not inflict the penalty of fine.'

'*Them*'—i.e. thieves other than *Brāhmaṇas*.

Shaṅkha—

[659] 'For the *Brāhmaṇa*, shaving of the whole head; for others, parading on a donkey.'

This applies to the *Brāhmaṇa* engaged in a sacrificial performance.—'*Others*'—*Kṣattriya* and others of the middle class.

All thieves are first of all to be made to restore the stolen property to the owner, and it is only after that that the prescribed punishment shall be inflicted on them.

Says *Yājñavalkya* (2.270)—

[660] 'The thief should be made to restore the stolen goods and then to be punished with the various forms of corporeal punishment. If he is a *Brāhmaṇa*, he should be branded and banished.'

'*Branded*'—on the forehead, with the mark of the female organ and other marks.

This applies to the *Brāhmaṇa* of the middle class.

Says *Kātyāyana*, in connection with *Brāhmaṇas*—

[661] 'Whether they have been caught with the stolen property or not, if it is proved by indications that they have actually committed the theft,—they should be deprived of their entire property ;—

[662] 'those who possess good qualities should be kept, till death, in iron-chains, on low diet, and do work for the King; such is the opinion of *Kaushika*.'

'*Hoḍha*' is stolen property.—'*Entire property*',—this applies to the *Brāhmaṇa* who is rich, but devoid of learning and character; while *being kept in chains*, and *on low diet* and *serving the King* applies to the *Brāhmaṇa* who is similarly devoid of learning and character, and has no property.*

Bṛhaspati (22.22)—

[663] 'When one endowed with character and learning has committed a theft, if he were imprisoned, he would suffer much; he should therefore be made to restore the stolen goods to the owner and to perform expiatory rites.'

Yājñavalkya—

[664] 'For the *Shūdra* the guilt of theft is *eight-fold*; for the *Vaishya*, sixteen-fold; for the *Kṣattriya*, thirty-two-fold; for the *Brāhmaṇa*, sixty-four-fold, or even a hundred-fold, or twice sixty-four; as he should be cognisant of the good and bad points of the act.'

The qualification '*cognisant, etc.*' is to be construed with all.

Thus the meaning is as follows:—(*a*) If the theft has been committed by a *Shūdra* who is cognisant of the character of the act, then the punishment inflicted upon him shall be eight times of what has been prescribed; for the *Vaishya* similarly qualified, sixteen-fold; for a *Kṣattriya* of the same qualifications, thirty-two times; for a similar *Brāhmaṇa*, sixty-four times; if the latter is still more qualified, it will be a hundred times; for one possessed of still higher qualities, a hundred and twenty-eight times.

SEMI-THIEVES

Manu says (8.340)—

[665] 'The *Brāhmaṇa* who receives gifts from thieves should be dealt with like thieves,—even though he may have earned them through sacrificing and teaching.'

Again—

[666] 'The King shall punish like thieves those who provide fire, food, weapons and shelter to thieves; as also those who help to place the booty within their reach '—(*Manu* 9.278).†

* (*a*) If the culprit is one endowed with character and learning, he should be banished;—(*b*) if he is not so endowed, and is wealthy, his entire property shall be confiscated;—(*c*) if he is poor and devoid of learning and character, he shall be imprisoned, etc.—(*Vivādaratnākara*, p. 331).

† When such help is given through fear or ignorance, this rule does not apply;—says *Vivādaratnākara* (p. 339).

'Fire'—such as is helpful in stealing.—'*Bhakta*'—food for the thieves.—'*Weapons*'—such as are helpful in stealing.—'*Avakāsha*'—lodging for the thieves.—'*Sannidhātṛṇaḥ*'—those who place the stealer and the stolen within each other's reach.

Yājñavalkya (2.276)—

[667] 'One who knowingly provides, for the thief or for the murderer, food, shelter, fire, water, advice, implements or funds should suffer the highest amercement.'

The 'fire' and 'water' meant are such as help in the stealing.—'*Advice*'—regarding the method of stealing.—'*Implements*'—needed for the stealing; such as the spade and the like.—'*Funds*'—travelling expenses for the man going away with the booty.—'*Jānataḥ*'—i.e. knowingly.—One who does this should suffer the highest amercement.—One who helps the murderer also in the said manner should suffer the same penalty.

Nārada—

[668] 'Those who provide food and shelter to operating thieves,—and also those who, able to catch them, let them go—shall be punished like thieves.'

Those who provide to the thief any one of these things,—and those who, while capable of catching them, let them go,—all these shall be punished like thieves.

[669] 'Those who invite thieves, those who direct them, those who provide them with opportunities, and those who hide them,—all these should be punished like the thieves themselves.'

Those who invite (prompt) or guide the thieves,—or place them in favourable positions,—or hide them when they are chased by the owners of the stolen property,—all these are as good as thieves.

Kātyāyana—

[670] 'Those who buy stolen property, and those who receive it in gift,—and also those who hide them,—should all be punished like thieves.'

That is, one who buys stolen goods—knowing them to be as such,—those who receive them in gift,—and those who conceal them,—should be punished like the thief.

In continuation of the word 'should kill', *Viṣṇu* says—

[671] 'Those who openly provide food and shelter to thieves,—except in cases where the King is unable to protect his people.'

That is, in the event of the King being unable to suppress thieves, if one provides food and such things to them, in order to save himself, he does nothing wrong.

Manu (9.272)—

[672] 'If those entrusted with the work of guarding the realm, and those vassals who have been ordered to assist in the work, should remain neutral during raids against thieves,—the King should punish them like thieves.'

That is, the man put in charge of the realm,—as also the vassal similarly entrusted with its safety,—if these remain indifferent, they should be punished like thieves.

Again—

[673] 'If people do not hasten to assist, to the best of their power,—whenever a village is attacked, or a dyke is broken, or stolen goods are detected, —they should be banished along with their chattels'—(*Manu* 9.274).

'*Grāmaghātē*'—when there is disturbance in the village; '*Īhītābhaṅgē*'—when there is breaking of the dyke that had been set up for the protection of the crops;—where stolen goods are seen in the hands of thieves on the road;—if under such circumstances, any one does not come to the rescue to the best of his power,—even though he may not have been appointed to the work,—he should be banished from the realm, along with his property.

Exceptions to 'Theft'

Manu—

[674] 'If a twice-born person, running short of provision while on a journey, takes two sugar-cane sticks, or two roots, from another man's field, he should not be punished.'

'*Kṣīṇavṛtti*'—one has no food with him for the journey.

[675] 'Similarly, if he takes trees, roots, fruits and fuel for the Fire, or grass for the feeding of cows,—it is not theft—says *Manu*.'

'*Fruits*'—i.e. those not gathered by others. That this is meant is clear from the words of *Gotama*—

[676] 'Fruits that have not been gathered.'

Similarly one may take fuel belonging to others, for the purpose of lighting the Sacrificial Fire,—or other's grass for the feeding of cows.

In connection with the duties of the King, says *Āpastamba*—

[677] 'In villages and towns, he should post noble, honest and truthful persons for the protection of the people.—There should be officers under them with the same qualifications;—eight miles around the town shall be guarded against thieves,—and two miles around a village.'

That is, for the protection of villages and towns, the King should appoint guardians of high character, with equally qualified assistants;—and these shall have to restore whatever may be stolen within a radius of four miles round the town. Similarly the man placed in charge of the village should restore the property stolen within the radius of two miles round the village.

Says *Kātyāyana*—

[678] 'When a theft has been committed in a house, and the thief is not detected, then the stolen property should be made good by the district-officer, the police-officers and the detectives.'

The House is mentioned only as an example. What is meant is that, if even after search the thief is not detected, the King shall make the officer in charge of the detection or the district-officer to make good the stolen property.

'*Ārakṣaka*' is the officer known as the '*Koṭavāra*';—the '*Deshapati*' (*Dikpāla*) is the officer in charge of the district.

Kātyāyana—

[679] 'Property stolen on the outskirts of the village shall be made good by the village-officer; what is stolen in the pasture-land should be made good by the owner; and what is stolen outside the pasture-land should be made good by the detective officer.'

'*Vivīta*', 'Pasture-land'—i.e. Forest;—it should be made good by the owner, i.e. by the King himself;—if it has been committed, outside the pasture-land—i.e. in the cultivated fields,—then by the 'detective officer', who has allowed the thief to escape.

Again—

[680] 'Whenever anything is stolen in the kingdom, the King himself shall make good the loss; and on search, if the stolen property is found, the King shall take that for himself;—

[681] 'He shall try to restore to the owner an article exactly like the one stolen; if that is not possible, he shall pay its price; otherwise he incurs sin.'

'*Svarūpa*'—the same thing.

Says *Vṛddha Manu*—

[682] 'If a portion of the stolen property has been recovered by the owner from a certain person, the rest of it also should be realised from him,—if the owner has fully established his claim.'

When a part of the stolen property has been recovered by the owner from a certain person,—the remainder also he shall obtain from that same person; but only in the event of the owner claiming that remainder as his own, and the thief denying it,—if the owner swears to it. In case, however, there is no ground for realising the remainder from the man who has been suspected to be the thief,—then the aforesaid rule stands.

Yājñavalkya (2.173)—

[683] 'When a stolen or lost property is brought to the King by police-officers or district-officers, it shall be restored to the owner, if it is within a year of the theft; if it is after a year, the King himself shall take it.'

'*Shaulkika*' is the police-officer in charge of the safety of the realm.—'*Sthānapāla*' is the officer in charge of the district. 'Or' indicates that no restriction is meant (as that these two officers alone being the persons bringing up the stolen or lost article).—'*Naṣṭa*'—lost through carelessness;—'*Apahṛta*'—stolen by thieves.—Thus what is meant is as follows—When a certain thing has been lost or stolen,—and it is brought over to the King by some one other than its owner,—it should be kept by the King for one year; if the owner turns up within the year, he shall receive the thing; if he does not, then after the year, the King of the realm shall take it for himself.

Manu (8.34)—

[684] 'The property that has been lost and found shall be kept in the charge of vigilant men; if the King detects thieves getting at such things, he shall have them killed by an elephant.'

'*Tatra*', 'at such things'—while the property is guarded by the King's officers.—'*Ibhēna*'—by an elephant.

CHAPTER XIV

'Sāhasa'—Acts of Violence—Crimes

[*Note*—There is some confusion in the use of this term '*Sāhasa*'. It is clear that in its exact connotation it stands for 'acts of violence', and should include all *crimes*. According to *Manu* (8.332), 'if an act is committed with violence and in the presence of men, it is *Sāhasa*'. *Nārada* has classified *Sāhasa* under the five heads of (1) 'Man-slaughter', (2) 'Robbery and Theft', (3) 'Adultery', (4) 'Defamation and Abuse', and (5) 'Hurt'.—Of these, the last two and the second have gone before; and the third (Adultery) is coming under Chapter XV; so the present chapter deals with all other crimes—including *Man-slaughter*.]

On this subject, says *Nārada* (14.1)—

[685] 'Whatever act is done with violence by persons inflamed with the pride of strength is called *Sāhasa*, Crime,—the term being derived from *Sahas* which connotes *Violence*.'

Again—

[686] 'Theft is a special form of Crime; its difference (from *Crime* in general) is thus described—while *Crime* consists of an attack with violence and force, *Theft* consists of an attack through fraud'—(*Nārada* 14.12).

That is, the attack that is launched with violence within cognizance of the guardian is 'Crime', while the attack that is made under 'fraud'—i.e. without cognizance (in the absence) of the guardian, is 'Theft'.
The various forms of Crime also have been described by *Nārada* (14.4)—

[687] '(*a*) Destroying, reviling, disfiguring or otherwise injuring fruits, roots, water and the like,—or agricultural implements;—(*b*) assaulting another man's wife;—and (*c*) offences encompassing life;—are crimes of (*a*) the lowest, (*b*) the middle, and (*c*) the highest degree respectively.'

In regard to (*a*), says *Manu* (?)—

[688] 'Agricultural Implements, Dykes, Flowers, Roots and Fruits,—one who destroys these or steals them, should be fined 100 and more, according to the gravity of the offence.—Cattle, Clothes, Food and Drinks, Household Implements,—one who destroys these or steals them, should be fined 200 and more.—Women and Men, Gold and Gems, Property of Deities and *Brāhmaṇas*, Silks and other valuable things,—one who steals these, should be fined the value of the article, or double,—in accordance with the character of the culprit. All men who kill others should be put to death, in order to prevent the repetition of such Crimes.'

'*Agricultural implements*'—the plough and the like.—'*Household implements*'—the stone-slab and the rest.—'*Hundred and more*'—a Hundred being the minimum.

Nārada (14.7–9, 11)—

[689] 'The punishment inflicted upon the culprit should be proportionate to the heaviness of the Crime committed; but it shall not be less than a *Hundred* for a Crime of the first degree; not less than *Five Hundred* for a Crime of the middle degree; corporeal punishment, confiscation of the entire property, banishment, branding and amputation of the offending limb are also prescribed for Crimes of the highest degree.—

[690] 'The first two of these may be socially associated with after they have undergone the punishment; but one who has committed a Crime of the highest degree should not be conversed with even after having undergone punishment.'

The law briefly is as follows:—(*a*) If a small amount of property has been stolen, or destroyed, the offender shall be fined a hundred and over;—(*b*) if a field or dam or such thing is taken away, or destroyed by force,—the stealer or criminal should be made to pay to the owner of the property a sum equal to the price of the article; but a man of the lower class should be fined double;—(*c*) the criminal of the highest degree,—even where purified by the punishment,—should not be permitted to associate with people in any way.

Says *Manu* (8.288)—

[691] 'When a man, knowingly or unknowingly, damages the goods of another, he shall give satisfaction to him and pay to the King a fine equal to it in value.'

Yājñavalkya (2.230)—

[692] 'The taking away of what is public property is what has been called *Crime*; the penalty for it is a fine which is double the amount of the price of the property concerned.—If the charge is denied, the fine is to be quadruple.'

The term '*Sāmānyaprābha*', 'public property', here stands for what belongs to another person.

Again—

[693] 'For damaging a wall, the fine is 15 *Paṇas*; for cracking it, 20 *Paṇas*; for cutting it in two, and for pulling it down, 40 *Paṇas* each.'

That is, (*a*) for 'damaging'—i.e. for shaking and loosening,—a wall belonging to another person, the fine is 15 *Paṇas*;—(*b*) for 'cracking' it,—i.e. for loosening its cements, 20 *Paṇas*;—and (*c*) for 'cutting it in two', and for 'pulling it down',—for both these, it is 40 *Paṇas* each.*—In every case, there is to be rebuilding of the wall, according to *Manu's* doctrine that 'he shall give satisfaction to the other party' (Text 691 above).

[694] 'In the case of Leather and Leather-goods, as also in that of Wooden and Clay goods, the fine is five times the value of the article; so also in the case of Flowers, Roots and Fruits.'

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* There is some difference of opinion in the interpretation of this text: According to *Aparārka* it means that—the fine for damaging the wall is 5,—for cracking it, 10,—for cutting in two, 20,—and the man who pulls it down should pay the cost of rebuilding it.—According to the *Mitākṣarā*, the fines for the first three acts are 10, 15 and 20,—and for *pulling down* it is to be the sum total of these three, i.e. 45, along with the cost of rebuilding it.

'*Leather-goods*'—e.g. Shoes.—The meaning of the first term '*Charma*', 'Leather', is quite clear.—'*Wooden goods*'—such as the pot for measuring rice.—'*Clay-goods*'—e.g. the Jar.

When these articles are destroyed by force, the fine shall be five times the value of the thing destroyed; so also in the case of flowers, roots and fruits.

The fine of 'a hundred and more' that *Manu* has prescribed (Text No. 688) in connection with *Flowers*, etc. applies to the case of specially valuable flowers, etc.

In all cases, the owner of the article has to be satisfied.

Kātyāyana—

[695] 'If a man brings about the damage, breakage or destruction of any article, he should suffer the first amercement; and the article itself should be restored to the owner.'

'*Damage*'—is some slight injury;—'*Breakage*' connotes half-destruction;—and '*Destruction*' connotes entire destruction.—The 'article' meant here is a piece of Rock-crystal and such things.—'*Dravyabhāk, etc.*'—i.e. the Rock-crystal itself is to be restored to the owner.

Yājñavalkya (2.224)—

[696] 'If a man throws into another man's house such substances as cause pain and suffering, he shall be fined 16 *Paṇas*. If he throws such things as are a danger to life, he should suffer the middle amercement.'

'Causing pain and suffering'—such as Thorns.—'Danger to life'—such as Snakes.—If one throws such things into another man's house,—the former is to be fined 16 *Paṇas*, and the latter is to suffer the middle amercement.

Says *Viṣṇu* (5.108)—

[697] 'If one demolishes a house or a wall and such structures, he should suffer the middle amercement and should have it repaired.'

That is, if a man demolishes the wall or such things in another man's house, he should be made by the King to suffer the middle amercement; and he should also restore the wall, etc. demolished by him to its former condition.

Again—

[698] 'If one throws into another man's house things likely to hurt, he should be fined 100 *Paṇas*'—(*Viṣṇu* 5.110).

The 'hurt' meant here is of the very painful kind.

Yājñavalkya (2.232–237)—

[699] 'One who insults or disobeys his superiors, one who strikes his elder brother's wife, one who does not deliver a message [or who does not give what he has promised—according to *Mitākṣarā* and *Aparārka*], one who breaks into a sealed (locked) room, one who inflicts injury on his neighbours, kinsmen and others,—each of these shall be fined 50 *Paṇas*;—

[700] 'One who has intercourse with a widow, without justification, one who does not respond to call for help, one who calls for help without any reason, a *Chāṇḍāla* who wilfully touches superior persons, one who feeds *Shūdra* mendicants at rites in honour of deities and fathers, one who utters an improper oath, one who does the work of experts

for which he is not qualified, one who has deprived trees (or v.l. *bulls*) and small animals of their virility, one who deals dishonestly with common property, one who destroys the embryo of a slave-girl,—and any one out of the following pairs who abandons the other without the latter becoming an outcast—Father and Son, two Friends, two Brothers, Husband and Wife, Teacher and Pupil;—each one of these shall be fined 100 *Paṇas*.'

'*Arghya*', 'Superiors'—e.g. the Preceptor;—one who does the *insulting* or disobeying of these.—'*Striking*'—Beating.—'*Saudiṣṭa*'—the message that has been sent.—'*Sealed*'—the house closed with a seal.—'*Sāmanta*' are neighbours; '*Kulika*'—Kinsmen;—one who does not invite these on the occasion of auspicious ceremonies.—All these should be fined 50 *Paṇas*.

'*Without justification*'—i.e. without being 'appointed' according to law, if one has intercourse with a widow.—The penalty here prescribed is for the crime of *non-appointment*; that for *adultery* is another punishment.—'*Cry for help*'—i.e. when people attacked by thieves call for help, if one does not 'respond',—i.e. does not answer the cry.—'Improper oath'—such as 'I may. . . .Mother if I have done this'.—'Not qualified'—incapable;—'work of experts'—such as Yogic practices;—if a man proceeds to work for which he is not fit, he should be punished.—The 'virility' of 'trees' consists in capacity to produce fruits;—one who deprives them of this capacity, by means of medicines.—'Common property',—one who appropriates to himself what really is common to others.—Between Father and Son, between two Friends, between two Brothers, between Husband and Wife, between Teacher and Pupil,—one who abandons the other without the latter becoming an outcast, which is the sole ground for abandoning,—the fine for each of these is 100 *Paṇas*.

Says *Manu* (8.389)—

[701] 'Neither the Mother, nor the Father, nor the Wife, nor the Son deserves to be forsaken; one who forsakes these, unless they are outcasts, should be fined 600 by the King.' *

'*Strī*'—Wife;—'*forsaking*'—not feeding and maintaining in the manner prescribed.

With reference to these same persons, says *Shaṅkha*—

[702] 'One who wilfully forsakes his Son and others should suffer a fine of 200.'

The penalty prescribed by *Yājñavalkya* (under Text No. 700 above) is meant for the case of forsaking between the two relatives both of whom are illiterate; that laid down by *Manu* (Text No. 701) is meant for the case where between the two persons, there is wilful forsaking of the illiterate by the learned; while that prescribed by *Shaṅkha* (Text No. 702) is for the case where between the two persons, there is wilful forsaking of the learned

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* As regards the Mother, *Shātātapa* has declared that 'to the Son, the Mother never becomes an outcast'; the 'forsaking' of the Mother would consist in turning her out of the house; that of the outcast Wife would consist in giving up all intercourse with her and forbidding her to do household work; but food and clothing would continue to be given—(*Medhātithi*).

According to *Aparārka* (p. 823), the punishment here prescribed is for one who has forsaken *all* the persons mentioned.

'*Forsakes*'—i.e. omits to render the treatment that is their due. The punishment here laid down is for one who, while fully cognisant of what is right and wrong, forsakes *any one* of the persons mentioned—(*Vivādaratnākara*, p. 357).

by the illiterate.—Similarly there may be assumed the penalty as between two learned persons.

Shaṅkha—

[703] 'For ill-treating one's Father, Mother or Teacher,—there should be cutting off of the limb.'

That is, that limb should be cut off with which he strikes.

Viṣṇu (5.98–102)—

[704] 'One who insults a *Brāhmaṇa* by offering him something uneatable should be fined 16 *Suvarṇas*; one who offers him such food as would deprive him of his caste should be fined 100 *Suvarṇas*; for offering spirituous liquor, one shall be put to death.—For one who insults a *Kṣattriya* in the same manner, the fine shall be half; half of that again for insulting a *Vaishya*.'

'*Uneatable*'—e.g. Ordure.—'As would deprive him of his caste'—e.g. Garlic.—'*Surā*' is well known.—'*Tadardham*'—the pronoun '*tat*' stands for what has gone immediately before.

This rule is meant for cases where the *Brāhmaṇa* and others insulted are possessed of very high qualifications.

Says *Yājñavalkya* (2.295)—

[705] 'For insulting a *Brāhmaṇa* by offering him what is uneatable, the fine is the highest amercement; for insulting a *Kṣattriya*, the middle amercement; for insulting a *Vaishya*, the lowest amercement; and half of that for insulting a *Shūdra*.'

The milk of the *Kapilā* cow would be 'what is uneatable' for the *Shūdra*.—'*Half of that*'—i.e. 125 *Paṇas*.

This is for cases where the *Brāhmaṇa* and the rest are of the inferior order.

Manu (?)—

[706] 'One who makes a *Vaishya* or a *Kṣattriya* or a *Brāhmaṇa* eat or drink what should not be eaten or drunk should suffer the lowest, the middle or the highest amercement, respectively; and in the case of the *Shūdra*, the fine should be 54 *Paṇas* only.'

This applies to the very inferior class of *Shūdra*. The rest is parallel to what has been declared by *Yājñavalkya* (Text No. 705 above).

Viṣṇu (5.173)—

[707] 'One who eats such food as leads to loss of caste should be banished.'

That is, the *Brāhmaṇa* who, of his own accord, eats such things as Garlic and the like, should be banished from the country.

Yājñavalkya (2.300)—

[708] 'One who declares his wife's paramour to be a thief should be fined 500; if he receives a bribe from him and allows him to escape, he should be fined eight times that amount.'

When a man is caught in one's house who is really the paramour of a lady of the house,—but for fear of family-scandal, the master of the house declares him to be a thief and conceals the fact of his being a paramour,——such a master shall be fined 500. If he accepts a bribe from the man thus caught, and lets him go, he should be fined eight times 500.—Others hold that the fine is to be eight times the amount received as bribe.

Again—

[709] 'One who sells clothes obtained from dead bodies, one who strikes his Teacher, one who rides on the King's conveyance, or sits on the King's seat,—should suffer the middle amercement'—(*Yājñavalkya* 2.302).

'*Clothes, etc.*'—i.e. the piece of cloth in which the dead body had been wrapped; one who sells it, without saying that it is so.—'*Rides or sits, etc.*'—i.e. without the King's permission.

Manu (9.290)—

[710] 'In all cases of Malevolent Rites, the fine shall be 200; as also in the case of magic spells by persons not related, and also in that of various kinds of sorcery.' *

[711] 'For adulterating unadulterated commodities, and for breaking and wrongly boring gems,†—the penalty is the lowest amercement'—(*Manu* 9.286).

[712] 'If a man of low caste, through greed, subsists by the occupations of his superiors,—the King shall deprive him of his property and immediately banish him.'

(*a*) '*Malevolent rites*'—e.g. when one performs the *Shyēna* sacrifice with a view to bringing about the death of some one who has done him no wrong;—(*b*) when one undertakes the treatment of diseases without being an expert;—(*c*) when one performs such improper acts of sorcery as making a man run away and the like;—for all this the fine is 200.

(*a*) When one who mixes an inferior substance with a superior substance and thereby reduces the quality of the latter;—(*b*) one who pierces a gem which cannot be pierced, or (*c*) even the gem that can be pierced, if he pierces in a wrong place; for each of them the fine is 250.

When e.g. the *Shūdra* makes a living by the occupation of the *Kṣattriya*,—his punishment is that he should have all his property confiscated and then banished.

Yājñavalkya (2.303)—

[713] 'If a *Shūdra* makes a living by representing himself as a *Brāhmaṇa*, he should be fined 800.'

That is, one who makes a living by disguising himself through wearing the marks of the *Brāhmaṇa*.

Manu (9.285)—

[714] 'One who destroys a crossing, a flag, a pole or images, shall repair the whole of it and pay a fine of 500.'

'*Saṁkrama*'—known as '*Sākama*' (or *Shāka*) [a contrivance by which men cross over water-ways—according to *Medhātithi*];—'*flag*'—the Flag with the insignia of the Garuḍa-bird, set up in honour of the Deity.—'*Pole*'—as

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* '*Malevolent rites*',—i.e. encompassing death by means of incantations and such other means. If any one performs such a rite, the fine shall be 200, if the death aimed at does *not* come about; in case the death does come about, the punishment shall be the same as in the case of *Man-slaughter*—(*Medhātithi*).

† Gems have been classed as 'good', 'bad' and 'indifferent'; the punishment therefore shall be regulated in accordance with the class to which the gem in question may belong. In the case of 'bad gems' the fine shall be the lowest amercement; in the case of 'indifferent gems', it shall be the middle amercement; and in the case of 'good gems', the highest amercement—(*Medhātithi*).

indicating the market-place, etc.—'*Images*'—of Deities [crude images—according to *Vivādaratnākara*, p. 364];—if one breaks any one of these, he should be fined 500.

Kātyāyana—

[715] 'One who steals, breaks or burns the image of deities,—or demolishes a temple,—should suffer the first amercement.'

Viṣṇu (5.174)—

[716] 'One who sells uneatable food or such things as should not be sold,—or breaks the image of a deity,—should suffer the highest amercement.'

In this connection, the higher or lower amount of fine is to be imposed in accordance with the superior or inferior quality of the image concerned.

Shaṅkha—

[717] 'For the demolition of images, gardens, wells, bridges, flags, dykes, or drinking pits,—the offender should be made to rebuild and repair them, and also to pay a fine of 800.'

'*Nipāna*', 'Drinking Pit'—is the place set up near wells for cattle to drink water from.—When any one of these seven things is demolished,—the man who demolishes them should repair them and bring them up to the same condition as before; and he shall also pay a fine of 800 *Paṇas*.*

In continuation of the word—'he should be put to death'—says *Viṣṇu*—

[718] 'Those who break dykes.'

This applies to the case of very extensive dykes and dams.

In continuation of the word—'cutting off of the limbs of the body',—says *Shaṅkha*—

[719] 'For breaking a tank or a well or a pond or a drinking pit,—for spoiling a path or a liquid substance,—and for spoiling a girl who is not a slave by giving her to a slave'.

'Spoiling of the path'—by spreading thorns and sharp nails;—'spoiling of a liquid substance'—by throwing poison into it;—and for spoiling a girl who is not a slave by giving her to a slave and thus reducing her status;——one who does this there should be death or the cutting off of a limb.

Yājñavalkya (2.278-279)—

[720] 'A woman who has administered poison, or set fire,—or has killed a man, or has broken a dam—shall have a piece of stone tied round her neck and drowned in water;—provided she is not with child.'

That is, a woman who has administered poison,—or has set fire to a house,—or has killed a man,—or has broken a dam,—if she is not with child,—she shall have stone tied round her neck and drowned in water.

Again—

[721] 'A woman who is very unchaste,—one who has killed her husband or elder or child,—shall have her ears, hands and nose cut off and then gored to death by bulls '—(*Yajñavalkya* 2.278-279).

The woman who is uncommonly unchaste,—who has encompassed the death of her husband or father and other elders or her own child,—should first have her ears, hands and nose cut off, and then gored to death by bulls.

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* This fine of 800 is to be imposed in the case of images of superior quality; for ordinary images the fine shall be 500 (see Text No. 714 above).

Again—

[722] 'Those who set fire to fields, houses, forests, pasture-lands or threshing yards,—and one who has intercourse with the King's wife,—shall be burnt in burning mats'—(*Yājñavalkya* 2.282).

That is, one who sets fire to any of the six things mentioned—Fields and the rest,—as also one who has intercourse with the King's wife—should be burnt in burning reeds.*

Manu (9.289)—

[723] 'One who demolishes the wall, or fills up the ditch, or breaks up the gates, shall be instantly killed.' †

The King shall immediately kill the man who has demolished the wall protecting the city, or the protective ditch surrounding it, or the gateway (in the walls).‡

[724] 'Those who rob the King's Treasury, those who are disaffected towards him,§ and those who conspire with his enemies,—the King shall strike with various forms of punishment.'

Yājñavalkya (?)—

[725] 'One deserving death may pay a fine of a hundred *Suvarṇas*; one deserving the cutting off of limbs may pay a fine of half that amount; and one deserving banishment, a fine of 25.'

That is, when a *Brāhmaṇa* has committed a crime for which the penalty prescribed is death, he should (instead) be fined 100 *Suvarṇas*; and so on.

Again—

[726] 'Those wicked-minded officials who receive bribes from men on business should have their entire property confiscated and be banished' —(*Manu*, 7.124).

[727] 'If the King's officers, gloaming in the fire of wealth, hamper the business of suitors,—the King should confiscate their entire property'—(*Manu* 9.231).

'*Kāryibhyaḥ*', 'men on business',—i.e. men who have cases in the Court.—'*Kāryiṇām*', 'Suitors'—i.e. Plaintiffs and Defendants.

Yājñavalkya (?)—

[728] 'Through spies, the King shall find out all about the doings of the State-officials, and shall honour the honest and strike the dishonest among them.

[729] 'Those found to be addicted to bribery, he shall dispossess of all belongings and banish. He shall always make Vedic Scholars to live in his kingdom, honouring them with gifts and proper respect.'

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* '*Fields*'—i.e. those with ripe corns standing;—'*Forests*'—or gardens—(*Mitākṣarā*).

† Another reading for '*pramāpayēt*', kill, is '*vivāsayēt*', banish.

‡ The right reading '*nagarādyāshrayasya prāchīrasya parikhāyāḥ*' is supplied by *Ma.*

§ '*Disaffected*'—e.g. those who obstruct the King's efforts to import rare articles, such as the coal-black horse, which is rare for Easterners, or the elephant, which is rare for Northerners;—or try to turn his friends into enemies, and so forth. The punishment need not be Death in all these cases—(*Medhātithi*).

Again—

[730] 'An officer who imprisons a man who (being guiltless) should not be imprisoned, or lets go a guilty person, or lets go an accused person without trial, shall suffer the highest amercement'—(*Yājñavalkya* 2.243).

If an officer imprisons a person who has been found to be guiltless and therefore not to be imprisoned,—or lets go a guilty person who should be imprisoned,—or either imprisons or lets go a man who has not been tried, and in regard to whom it has not been decided whether he is guiltless or guilty,—he should be fined 1,000 *Paṇas*.*

Viṣṇu—

[731] 'If an officer remits the fine of a guilty person, he should be made to pay double the amount of the fine; so also the wicked officer who punishes men who do not deserve punishment.'

If the man in charge of criminal work acquits the guilty, and does not punish him,—or punishes the guiltless who should not be punished,—he should be fined double the amount of the fine concerned.

Kātyāyana—

[732] 'Those who are addicted to sports reserved for the King,—or make a living by having recourse to the King's functions,—or talk ill of the King,—should be put to death.'

[733] 'Those who imitate the King,—or are too much addicted to amusements, —or levy extortionate demands,—or misappropriate the royal dues,— should suffer various forms of death.'

That is, (*a*) those who, without the permission of the King, dress like him,—(*b*) who are addicted to witness dancing and other amusements, to the detriment of State-business,—those who realise from the people an extortionate amount of royal dues, far above the normal,—or those who steal the King's wealth,—all these should be put to death in various ways.

In continuation of the term 'should be put to death', *Viṣṇu* says—

[734] 'Those who, not belonging to the royal family, aspire to the kingdom.'

'*Akulīnāḥ*'—born in a family to which the King does not belong.

Yājñavalkya (2.294)—

[735] 'If one enters in a Royal Warrant something more or less (than what has been ordered by the King),—or if one lets go an adulterer or a thief,—he should suffer the highest amercement.'

'*Royal Warrant*',—to the effect that 'so much is to be given' or 'so much is to be realised' and so forth.

Shaṅkha—

[736] 'If one forges a royal warrant,—or disobeys a royal command,—or makes use of false scales, weights and measures,—he should suffer death or the cutting off of a limb.'

(*a*) One who gives out as a royal command what the King has not commanded,—(*b*) one who acts against the King's orders,—(*c*) one who

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* This explanation is in accordance with *Aparārka*; according to the *Mitākṣarā*, there are only two offences mentioned here—(1) imprisoning the guiltless, and (2) letting go the accused without trial.—In either case, the *Mitākṣarā* adds the qualifying clause, 'if done without the King's orders'.

deals with false scales and false weights—like the *Seer*, etc.—he should be put to death or a limb should be cut off.

This option has been prescribed in view of the varying degrees of the seriousness of the offence.

With reference to a very trivial offence of this kind, *Kātyāyana* says—

[737] 'If a man makes use of false weights and measures, or of false coins,—he should suffer the highest amercement.'

'*Highest*'—i.e. 1,000 *Paṇas.*

Manu (9.232)—

[738] 'Forgers of royal edicts, those who bring false charges against the State, slayers of infants and *Brāhmaṇas*, and those serving his enemies—the King shall put to death.'

'*Edict*' here stands for the orders of the King.—'*Prakṛti*', '*State*', stands for the *Ministers*; those who bring false charges against them, attributing to them faults that have no existence.*—'*Those serving his enemies*',—i.e. those who serve people inimical to the King.—All these the King shall put to death.

Viṣṇu—

[739] 'Master, Minister, Ally, Treasury, People, Fort and Army constitute the *State*; those who vitiate these should be put to death.'

The term '*daṇḍa*' in this text stands for the *Army*.—The *State* consists of the seven factors here enumerated. If any one vitiates—brings false charges against—any one of these, he should be put to death.

Yājñavalkya (2.277)—

[740] 'For striking a man with a weapon, and for causing abortion,—the punishment is the highest amercement; the highest or the lowest amercement for the killing of a man or woman.'

For merely striking a man with a weapon,—and for causing abortion in a woman other than the *Brāhmaṇa*,—the fine is 1,000 *Paṇas.*

'*Highest or lowest*'—the option is in view of the high or low qualities of the person killed.†

Says *Ushanas*—

[741] 'For causing abortion by means of labour and exertion, the lowest amercement; for causing it by means of medicines, the middle amercement; and for causing it by striking, the highest amercement.'

'*Pariklesha*'—is causing over-exertion;—'*by medicine*'—by administering medicines;—or by 'striking',—if one brings about abortion, his punishment shall be the lowest, the middle and the highest amercements, respectively.

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* *Medhātithi* explains '*prakṛtīnām dūṣakān*' as 'sowers of disaffection among the people'.

† Whether it is to be 'highest' or 'lowest' shall depend upon the character of the person killed—(*Mitākṣarā*);—it is to be 'highest' for killing a *man* and 'lowest' for killing a *woman*—(*Aparārka*).

'*Causing abortion*'—This refers to cases other than those of the slave-girl or the *Brāhmaṇa* woman, for which two cases, other penalties have been laid down: in the case of the pregnant *slave-girl* the penalty is a fine of 100 *Paṇas*, and in that of the pregnant *Brāhmaṇa* woman, the punishment is the same as that for killing a *Brāhmaṇa*—(*Mitākṣarā*).

[742] '*Crime* has been declared to be of *five* kinds; of these, ***murder*** has been regarded as the worst; those who have committed it should not be punished with a fine, they should be put to death'—(*Bṛhaspati* 22.29).

'Those who commit it'—i.e. those who commit murder.

In regard to murder also, the same authority makes the following distinction—

[743] 'There are *open* murderers and *secret* murderers; in the case of both, the King shall avoid downright execution and put them to death by means of tortures of various kinds.'

'*Samyag-vadha*'—beheading straight-off.—The men should be deprived of life by means of several kinds of torture.

Kātyāyana also—

[744] 'In the case of murder, one who commits it should be put to an abnormal form of death.'

And again—

[745] 'Either for the sake of friendship, or for the sake of making money, the King who desires the good of his people should never let go the criminals, who are a source of danger to all living beings. If a King, through greed or fear, omit to strike the evil-doers, his kingdom shall be ruined and he himself shall fall off from kingship.'

[746] 'That man is a *criminal* who, through anger or some such cause, kills others by means of imprisonment, fire, poison or weapons.'

Baudhāyana—

[747] 'For killing a *Brāhmaṇa*, the *Kṣattriya* and others shall be put to death, after their entire property has been confiscated.—Among the ***Kṣattriya*** and other castes, for killing one of the same or a lower caste, the penalty imposed shall be in accordance with the strength and capacity of the murderer.—If a *Brāhmaṇa* kills a *Kṣattriya* he shall surrender to the King a thousand cows and a bull; if he has killed him in revenge, he shall pay a fine of 100. If he kills a *Vaishya*, he shall surrender a hundred cows; if a *Shūdra*, ten cows;—a bull being given in every case. The same for killing a woman or a cow, except when the woman killed was in her courses. For killing a milch cow and a calf, one should perform the *Chāndrāyaṇa Penance*.—For killing a woman in her courses, the punishment is the same as that for killing a *Kṣattriya*. For killing a *Bhāsa*, *Hamsa*, *Barhi*, *Chakravāka*, *Balākā*, *Kāka*, *Ulūka*, *Maṇḍūka*, *Nakula*, *Bhērika and Babhru*,—the penalty is the same as that for killing a *Shūdra*.'

If a man belonging to the *Kṣattriya* or the *Vaishya* or the *Shūdra* caste kills a *Brāhmaṇa*,—he shall have all his property confiscated and then killed.—'*Tēṣām*'—i.e. those same, belonging to the *Kṣattriya* and other castes,—'*Tulya*'—of the same caste; '*apakṛṣta*'—of a lower caste.—'*Yathāshakti*'—in accordance with his strength.—'*Yathābalam*'—according to his capacity to pay, the penalty may be the highest, middle or lowest amercement.—The particle '*cha*' is meant to indicate that corporal punishment may be inflicted.—'*Kṣattriya etc.*'—If a *Brāhmaṇa* kills a *Kṣattriya*, he should surrender a thousand cows with a bull; if he kills a *Vaishya*, a hundred cows

with a bull; if he kills a *Shūdra*, ten cows with a bull.—This last penalty for killing a *Shūdra* is also to be inflicted for killing a woman other than one in her courses, and also for killing a cow other than the milch cow and the calf.—'*Ātrēyī*' is woman in her courses; and for killing her, the punishment is the same as that for killing a *Kṣattriya*.—'*Bhērīka*' is what is known as '*Chhuchchhundari*' (Musk-rat).—'*Babhrū*' is the ordinary mongoose;—'*Nakula*' is the aquatic mongoose (the Beaver).—The phrase 'and others' is meant to include other animals.

Bṛhaspati—

[748] 'When several persons, in rage, strike a single man, the responsibility for his death rests upon one who struck the fatal blow, and it is he who has been declared to be the *murderer*; among these, the man who struck the fatal blow shall be made to pay the fine prescribed;—the first striker and his associates shall suffer half of that penalty;—the exact punishment shall be determined after carefully considering the seriousness or otherwise of the wound, the vital character of the place wounded, the strength (of the men) and the repetition of the blows, as indicated by the marks.'

The penalty prescribed for 'murder' shall be inflicted upon the man who struck the fatal blow; only half of it each, upon the first striker and his associates.—For the purpose of determining who struck the fatal blow, there should be examination of the seriousness of the wound, etc. etc.; that is, the grievousness or simplicity of the wound, the 'strength' of the men,—as shown by their proximity or otherwise to the part of the body wounded, and also the repetition of the blows.

Nārada (14.9)—

[749] 'This gradation of punishments has been ordained for all men without distinction, with the exception of corporal punishment for the *Brāhmaṇa*; a *Brāhmaṇa* should not suffer corporal punishment; his punishment consists in shaving of the head, banishment from the city, branding on the forehead with the mark of his crime and parading him on an ass.'

In connection with Crime and Theft, says *Yama*—

[750] 'For the *Brāhmaṇa*, there is no corporal punishment. He shall be imprisoned in a well-guarded prison and given food; or he shall be tied up with a rope and compelled to work, even of the lowest kind, for a month or a fortnight, in accordance with the nature of his offence.'

Yājñavalkya (2.231)—

[751] 'One who gets a crime committed by another person should be made to pay double the fine prescribed for that crime.—One who incites some one to commit a crime, saying—I shall pay all that you may incur by doing this act,—shall pay four times that fine.'

'*One who incites, etc. etc.*'—'Whatever liabilities you may incur in connection with this act, I shall pay, so you go and do it'—one who incites a man to commit a crime by saying this should suffer four times the penalty prescribed for that crime.

Kātyāyana—

[752] 'He who initiates the act, he who helps him, he who shows the way, he who provides shelter, he who supplies weapons and food to miscreants,—he who advises them to fight, and incites them to kill, he who overlooks the

act,—he who speaks of the faults of the man to be attacked, even though not employed for this purpose,—he who abets the perpetrator of the crime, he who does not prevent the crime, even though capable of doing so,—all these are perpetrators of the crime and should be punished proportionately in accordance with their capacity and strength.'

'*Ārambha etc.*'—(1) Having come to know that a certain person is going to commit a crime, if one incites and (2) helps him to do it,—or (3) offers him advice that makes that act easy,—(4) one who provides the miscreant with (5) shelter, or (6) with suitable weapons, or with food,—or (7) incites him to fight for avenging a wrong,—or (8) urges him to kill the wrong-doer by offering poison to him,—or (9) when some one is being attacked by criminals, if one, though himself unable to help, does not get others to help him,—(10) one, who is not employed by the King for that purpose, oppresses people,—(11) who speaks of the wrongs done by the man who is going to be attacked,—(12) one who abets the perpetrator of the crime,—(13) one who, though able to do so, does not prevent the crime;—all these thirteen persons are perpetrators of the crime concerned and should be accordingly punished in accordance with their capacity.

Nārada—

[753] 'If a man, having committed a crime, surrenders himself, or makes a confession in Court, his penalty shall be half of what has been prescribed.'

'*Surrenders*'—to the judicial officer;—'*makes a confession*'—i.e. reports the offence committed by himself.

Again—

[754] 'If, however, he tries to hide his wickedness,—even though he may continue to live thus, yet the Court-officials are not satisfied and he incurs a heavy penalty.'

That is, when questioned by the trying judge, the man denies his guilt, and continues to make a living by similar acts,—then a heavy punishment should be inflicted upon him, even for a trivial offence.

Detection of Criminals

Says *Yājñavalkya* (2.280-281)—

[755] 'When some one has been killed by an unknown person, his sons and relations should be questioned regarding any quarrels that he may have had recently; his woman also, who may be loving other men, should be questioned; as to whether he had gone out after a woman or in search of wealth or livelihood; in whose company he had gone out and so on. Questions should also be put gently to persons found near the scene of the crime.'

'*Found near etc.*'—i.e. near the place where the murder took place.

[756] 'In a case where the dead body has been found, but the murderer cannot be discovered, the King shall trace him by drawing inferences from the dead man's former enmities. His immediate neighbours and their neighbours, as well as his friends and relations shall be questioned by the King's officers with persuasion and other methods.—The guilty

person may be found out from his association with bad men, from signs of the crime on him, and from the possession of stolen property. Such has been the process of detection of murderers and thieves laid down.—If a man is arrested on suspicion, and he does not confess his guilt, he shall clear himself by an ordeal. Such is the law in connection with all disputes'—(*Bṛhaspati* 22.34–38).*

'*Guilt*'—of having committed the murder.

In regard to the case where the accused does not admit the guilt, says *Vyāsa*—

[757] 'Having found out the murderer the King shall put him to death, along with his associates and relations, by various painful methods of killing.'

Bṛhaspati—

[758] 'When the accused has cleared himself by ordeals, he should be acquitted; if not cleared, he should be put to death.—By punishments and favours the King augments his fame and righteousness.'

That is, by '*Punishment*' of the wicked,—and '*Favours*' bestowed on the good,—the King's fame and righteousness become augmented.

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* *Arthashāstra* (4.7) has a long note on this subject of Post-mortem Investigation:—

In cases of sudden death, the dead body shall be smeared with oil, then examined. If it is found that urine and faeces have come out, the stomach and the skin are full of wind, the hands and feet swollen, the eyes open, the neck bearing marks of violence,—it should be taken as a case of strangulation.—If the arms and legs are contracted and drawn in, it should be taken as a case of death by hanging.—If the hands, feet and abdomen are swollen, the eyes sunk, the navel protruding, it should be regarded as a case of death by impalement.—If the arms and eyes are protruding, the tongue lying between the teeth, the stomach swollen, it should be regarded as a case of death by drowning.—If the body is smeared with blood, the limbs broken and pierced, it is a case of death brought about by sticks and stones.—If the body is broken and torn, it is a case of death by being thrown down from a high place.—If the hands, feet, teeth and nails are black,—the flesh, hair and skin hanging loosely, and froth coming out of the mouth,—it is a case of death by poisoning.—If with these marks, a bleeding puncture is found, it is a case of snake-bite.—If the clothes and limbs are thrown about hither and thither, it is death by intoxicating drugs.—In case of death by poisoning, the remnant of food eaten by the man should be examined by means of milk.—If a piece of the man's heart, thrown into fire, make a *chit-chit* sound, and assume the colours of the rainbow, it should be regarded as a clear case of poisoning.—The dead man's servants should be examined and it should be found out if any of them had been recently abused or beaten by him; also his wife, who may have been unhappy or in love with some other man; also such relatives of his as might have been expecting to inherit his property or woman.—In cases of suicide, it should be found out what wrong the dead man had recently suffered.—The causes of anger leading to death are—some wrong done through one's wife or property, rivalry, enmity, trade and the eighteen Heads of Dispute.—If a man has killed himself, or got himself killed by others, or he has been killed by thieves or by other enemies,—the death shall be investigated through people who were near the dead man; the man who had called him, he with whom he was seated, he with whom he had started or with whom he had come to the place where he met his death,—every one of these should be closely questioned. Those who were near the dead man should be asked—By whom was he brought here? Who was the armed person whom you saw hiding?—If the dead man has left no relations, then those persons should be questioned who may be found to be using the clothes and ornaments that were found on the dead body.

CHAPTER XV

Adultery

Says *Vyāsa*—

[759] 'Adultery has been classed under three degrees—first, second and highest; and definitions have been provided of each of them separately.

[760] 'When a man meets a woman in a solitary place, or at some improper place or time and converses with her, casting amorous glances and smiles at her, it is Adultery of the First Degree.'

Bṛhaspati (23.6)—

[761] 'Casting amorous glances at a woman, smiling at her, sending messengers to her, touching her ornaments or clothes,—these constitute Adultery of the First Degree.'

Nārada—

[762] 'If a man sits, converses or flirts with a woman at an improper time and place,—these constitute the three steps to Adultery.—When a man and a woman meet each other at the confluence of rivers, or at a place of pilgrimage, or in a garden, or in a forest,—this also has been declared to be Adultery.—Sending of messengers or letters, or committing other improprieties constitute Adultery of the First Degree.'

The term '*Saṅgrahaṇa*' connotes that act by which it is indicated that the heart of the man is affected with love for the woman; e.g. conversation and other forms of association with other's women, which cannot be attributed to any other cause; as it is only from such act and word that it is inferred that the two are in love with each other. The qualification—'which cannot be attributed to any other cause'—implies that the name 'Adultery' cannot apply to such conversation, etc. as may have been entered into through ignorance, or through simplicity, or through over-anxiety, or with some other intention. To this same effect there is the following text of *Manu* (8.360)—

[763] 'Mendicants, Bards, Persons initiated for a Rite and Craftsmen may converse with women, unchecked.'

'*Adēshē*', 'improper places' (in Text No. 762)—e.g. in a solitary place.—'*Akālē*' (Text 762), 'wrong time',—e.g. at night.—'*Sthāna*'—sitting.—'*Āmoda*', 'flirtation';—joking and such other acts bring the two too close together, and from which it is inferred that their minds have deviated from the right path.—This constitutes Adultery of the First Degree.—This is the upshot of the whole definition.

With reference to Adultery of the Second Degree, says *Bṛhaspati* (23.7)—

[764] 'Sending perfumes, garlands, fruits, wines, food or clothes, and conversing with her in secret, constitute Adultery of the Second Degree.'

[765] 'Sending perfumes and garlands, incense, ornaments and clothes, also tempting with foods and drinks, constitute Adultery of the Second Degree'—(*Vyāsa*, according to *Vivādaratnākara*, p. 380).

'*Sambhāṣaṇa*' here stands for conversation of a much closer kind than the one mentioned before (under Text 762).—'*Perfumes, etc. etc.*'—All this involves expenditure of money, hence it is regarded as more serious.

In regard to Adultery of the Highest Degree, says *Bṛhaspati* (23.8)—

[766] 'Sitting on the same bed, dallying, kissing and embracing,—all this has been declared by the learned to constitute Adultery of the Highest Degree.'

And *Vyāsa*—

[767] 'When a man and a woman lean upon each other on the same bed or seat in a solitary place, catching hold of each other's hair,—this should be regarded as Adultery of the Highest Degree.'

[768] 'Offering assistance, flirting, touching of ornaments and clothes, sitting on the same bed,—all this has been declared to be Adultery.—If a man touches a woman in an improper place, and the woman, on being so touched, condones it,—all this, when done with mutual consent, has been declared to be Adultery'—(*Manu* 8.357-358).

'*Offering assistance*'—doing some helpful service. The reading in some places for '*upakāra*' is '*upachāra*', which means 'sending of betel-leaves, etc.' —'Flirtation' is dalliance.—'*Adultery*'—i.e. *of the Highest Degree*.—'*Improper place*'—e.g. the Breasts.

Nārada—

[769] 'If through arrogance or stupidity, a man were to say vauntingly—"I have enjoyed her before"—this would be Adultery.'

[770] 'If one catches hold of the hand or the hair or the clothes of a harlot,—or say to her "Stay, stay please",—all this would be Adultery.'

The 'harlot' has been mentioned only by way of an illustration; what is meant is that if a man behaved in the stated manner towards any woman except his own wife, it would be Adultery.

Bṛhaspati (23.9)—

[771] 'For the three degrees of Adultery, the lowest, middle and highest penalties shall be inflicted; the fines may be heavier in the case of the culprit being specially wealthy.'

That is, in connection with the three degrees of Adultery, the lowest, middle and highest amercements respectively shall be the penalty inflicted; and there may be heavier fines in the case of wealthy offenders.

Manu (8.354)—

[772] 'A man who engages in secret conversation with another man's wife,—and if he has been previously accused of similar offence,—should suffer the first amercement.'

That is, if a man has previously been accused of intimacy with a woman,—and yet he engages, in secret, in conversation with her, beyond the proper limits,—he should be punished with the first amercement.

Again—

[773] 'If, however, he is one who has not been previously accused,—and converses with her for some good reason,—he does not incur any guilt; as there is no transgression on his part'—(*Manu* 8.355).

That is, in the case of a man who has not been previously accused, if he, for some good reason, engages with her in conversation, even beyond proper limitations, there is nothing wrong in this.

But even for the man not previously accused, if he engages in conversation with another's wife in a solitary place, he does incur guilt;—as declared by the same authority.

[774] 'If a man converses with another's wife at a watering place, or in a forest, or in a house, or at the confluence of rivers,—he incurs the guilt of Adultery'—(*Manu* 8.356).

Says *Manu* (8.361)—

[775] 'One should not converse with the wives of other men, when forbidden; if, on being forbidden, he does converse, he should be fined one *Suvarṇa.*'

'*Forbidden*'—i.e. told by her husband and other relatives not to talk to her.

Yājñavalkya (2.285)—

[776] 'If on being forbidden to converse with a man, the woman converse with him, she is to be fined 100, and the man 200. If both of them have been forbidden, and yet keep on their conversation, both should be punished as for Adultery.'

The woman has been forbidden to talk to a certain man, and yet if she talks to him, she should be fined 100 *Paṇas*;—if it is the man who has been forbidden, and yet he goes on conversing with her, he should be fined 200 *Paṇas*;—if both have been forbidden, and yet they carry on their conversation, then each of the two should suffer the first amercement.

Manu (8.362-363)—

[777] 'If one carries on secret conversations with the wives of dancers, etc., or with slave-girls attached to a single master, or with female mendicants,—he should be made to pay a small fine.'

This is,—with one's own slave-girl who is attached to a single man,—or with a female ascetic,—if one converses in secret, he should be made to pay a fine less than a *Suvarṇa*.

Viṣṇu—

[778] 'By whatever limb a man misbehaves, that limb should be cut off; or a fine of eight and thousand imposed; except in the case of a *Brāhmaṇa* who is immune from punishment.'

That is, the *Brāhmaṇa* is immune from *corporal* punishment.

Manu (8.352)—

[779] 'Those three classes of men who are addicted to intercourse with the wives of other men,—the King shall banish after branding them with terror-inspiring punishments.'

'*Three classes of men*'—i.e. the three *non-Brāhmaṇa* castes.— '*Terror inspiring*'—such as the cutting off of Ear, Nose and so forth.*

* What is meant is that when the King has found out that a certain man is addicted to the vice of associating with other men's wives, he should brand him—by cutting off his ears or nose,—and then banish him. This refers to repeated acts—(*Medhātithi*).

In regard to cases of Adultery in the inverse order, says *Manu* (8.359)—

[780] 'In cases of Adultery, the non-Brāhmaṇa deserves the death-penalty.'

Matsya-Purāṇa—

[781] 'A man who brings about the meeting (between the man and the woman),—and he who provides the place for their meeting,—should be punished like the Adulterer himself.'

The '*Sañchāraka*'—is the person who brings them together, and the '*Avakāshada*' is one who provides the place of meeting.

That all this penalty does not apply to intercourse with women who are not the wives of any particular persons,—has been declared by *Manu* (8.362)—

[782] 'This rule does not apply to the case of the wives of dancers and singers; nor to those who make a living by their wives; as these men themselves bedeck their wives and secretly bring about their meeting with other men.'

'*Chāraṇa*' is the Dancer.—According to the assertion that 'the Wife and the Son are one's own body', the term '*ātman*' (in the compound '*ātmopajīviṣu*') stands for the *wife*; hence the dancer and others are so called because they make a living through their wives; in fact they themselves deck out their wives and bring them into contact with other men;—hence intercourse with these does not involve punishment for the offence of '*Adultery*'; the penalty for 'intercourse' remains in this case also; and this will be described under the section dealing with the *Bandhakī* (Harlot, Courtesan).

Nārada—

[783] 'Intercourse with a protected woman in another man's house has been regarded as culpable Adultery; not so when the woman has come to the man's house and made advances to him.'

In the case of a woman kept by another man, intercourse with her is culpable, and renders the man punishable only if it is another man's house. In case, however, the woman of her own will comes to the man's house and lends herself open to intercourse, even that culpability ceases.

Viṣṇu—

[784] 'The wife of a man who has forsaken her without fault, the wife of one who is impotent, or incapable,—if one has intercourse with such a woman even at her own home, if she is willing, he is not liable to punishment.'

In the case of the wife who has been forsaken by her husband, or of one whose husband is impotent, or incapacitated,—if she is willing, and the man meets her at her own house, there is to be no punishment.

Sexual Intercourse—Rape

Says *Manu* (8.364)—

[785] 'If a man violates an unwilling maiden, he deserves immediate death; if he violates a willing one, and is of the same status, he shall not suffer death.'

If a man of the same caste has intercourse with an unwilling maiden he should be killed,—not when she has been willing.

[786] 'An inferior man, having recourse to a superior maiden, should be put to death; he who has recourse to a maiden of equal status shall pay the nuptial fee, if her father so wishes'—(*Manu* 8.366).

That is, if a man of lower caste has intercourse with a maiden—willing or unwilling,—he should be put to death; if he has intercourse with her with her own and her father's consent, and he is of the same caste, he should be made to pay the nuptial fee to the father; but having received the nuptial fee paid, she should be married to the same man.*

This is what has been thus declared by *Nārada*—

[787] 'There is nothing wrong in a man having recourse to a willing maiden of the same caste as himself; but he has to marry her after having adorned her and honoured her.'

Shaṅkha—

[788] 'If the maiden is of the same status as the man, he should pay her the nuptial fee, present her with ornaments and a double dowry, and then marry her.'

That is, if a man has had intercourse with a maiden of the same status as himself, he should give her double the amounts of (*a*) nuptial fee, (*b*) ornaments and (*c*) dowry; and then marry her.

[789] 'If a man wantonly defiles a maiden through sheer audacity, his two fingers should be instantly clipped off; and he should also be fined 600.'

That is, if a man approaches an unwilling maiden of the same caste and, forcibly thrusting his fingers into her, defiles her,—his two fingers shall be cut off; and he shall also be fined 600.†

[790] 'A man of equal status defiling a willing maiden shall not suffer amputation of the fingers; he shall be made to pay a fine of 200, in order to prevent its repetition.'

One who defiles a willing maiden by thrusting his fingers into her.—'*Of equal status*'—of the same caste.‡

Nārada—[These texts are really from *Manu* 8.365 and 369)—

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* According to *Medhātithi* and *Vivādaratnākara* (8.402) this refers to cases where there has been consent on the part of the maiden.—'*If the Father wishes*'—In case the Father does not consent to receive it, the fee shall be paid to the King as fine, and the maiden may be given to the lover,—or if she has ceased to love him, to some one else. If the man has ceased to love the girl, he shall be compelled to marry her—(*Medhātithi*).

† Even when the maiden may have been willing, if her parents and relatives are close by and their presence is not heeded by the man, who, through sheer audacity,—and relying upon the girl's love for himself—defiles her, then either his fingers shall be cut off, or he shall be fined 600.—According to some people, what is meant is that if a man defiles a maiden of a low caste, he shall not suffer death, only his fingers shall be cut off—(*Medhātithi*).

‡ The preceding text refers to a case where the act has been audacious; the present text refers to a case where it has been done secretly, by stealth—Or the meaning may be as follows—If a maiden happen to be in love with a certain man, and having had intercourse with him has lost her virginity,—then, since the girl was willing, the man, for defiling her, shall only pay a fine of 200.—Or again, the 'defiling' meant here may be taken to stand for the *touching of the hand* or some other part of the body, with the motive that if people saw him touching her, they would think that she loved him and hence no one else would seek her hand and she would, of necessity, be married to himself—(*Medhātithi*).

[791] 'If a maiden approaches a superior man she shall not be made to pay a fine; if, however, she courts an inferior man, she shall be kept confined in the house.' *

[792] 'If a maiden defiles another maiden, her fine shall be 200; she shall also pay the double of her nuptial fee † and shall also receive ten lashes.'

'*Kuryāt*'—defiles her by thrusting fingers into her.—'*Shiphā*'—lashes with ropes or tree-shoots and such things.

[793] 'If a woman defiles a maiden, she shall be immediately shaven off; or shall suffer the amputation of her two fingers, and shall also be paraded on an ass.'

That is, if a woman defiles a maiden by thrusting her fingers into her, she shall have her head immediately shaven off; if she repeat the act, her two fingers shall be cut off and she shall be paraded on an ass through the public streets.

Yājñavalkya (2.287-288)—

[794] 'If a man carries away an adorned maiden of the same caste, he shall suffer the highest amercement; if he takes her away unadorned, he shall suffer the lowest amercement. If the maiden is of a superior caste, he shall suffer death.'

[795] 'In the case of willing maidens of inferior caste, there is no offence; in other cases, punishment should be inflicted.—For defiling a maiden of inferior caste, the man's hand shall be cut off; if the maiden is of superior caste, he shall suffer death.'

'*Adorned*'—i.e. promised in marriage to another man.—'*Uttamam*'—the highest amercement.—'*Anyathā*'—if she is *unadorned*, then '*adhaman*'——i.e. the lowest amercement.—If it is in the inverse order,—i.e. the maiden is of superior caste,—then the man of the lower caste should suffer death.—'*Anyathā*'—i.e. if the maiden has been unwilling.

Again—

[796] 'If a woman, proud of her relations and her qualities, passes over her husband,—the King shall have her devoured by dogs in a frequented place.'

That is, through pride of her wealth, brothers and her beauty and other qualities, if a woman disregards her husband and misbehaves with other men, her the King shall have devoured by dogs in the presence of people.

[797] 'The offending male shall be made to lie down upon a red-hot iron-bedstead; they shall put wooden logs over him so that the sinner may be burnt to ashes'—(*Manu* 8.371-372).

That is, the man with whom the said woman has misbehaved, and who has had recourse to her through pride of power,—the King shall make to lie down upon a heated bed of iron and burn him alive; and the men in charge

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* '*Approaches*'—has intercourse with.—'*Courts*'—tries to have intercourse with—(*Medhātithi*).

† '*Nuptial Fee*'—the exact amount shall depend upon the girl's beauty, fortune and other qualities—(*Medhātithi*).

'*Double*'—of 200 (the said fine); i.e. 400 will go towards the Nuptial Fee—*Vivādaratnākara* p. 403).

of killing him should throw upon him wooden sticks, sufficient to burn him to ashes.

Manu (8.385)—

[798] 'The *Brāhmaṇa*, approaching an unprotected *Kṣattriya* or *Vaishya* or *Shūdra* woman, should be fined 500; and 1,000 for approaching a woman of the lowest order.'

'*Antyaja*' is the washerman, the cobbler and the like. *

[799] 'If a man convicted of and punished for Adultery with a woman commits the same offence after a year, his fine shall be double.—The same also in the case of intercourse with a *Vrātyā* (Apostate) woman, or with a *Chāṇḍāla* woman'—(*Manu* 8.373).

When a man has been convicted of Adultery,—if, after a year, he is convicted of the same offence with the same woman, his fine shall be double the amount of his former fine.

'*With a Vrātyā woman, etc. etc.*'—'*Vrātyā*' is born of a *Vrātya* father; and the *Vrātya* is one who has fallen off from righteous conduct (an Apostate); according to the explanation provided by *Hārīta*, that—'the *Vrātya* is one who has given up all duties and righteousness'.—According to *Halāyudha* however, the *Vrātyā* girl is one who has remained unmarried beyond the marriageable age.—The penalty for intercourse with a *Vrātyā* girl or a *Chāṇḍāla* girl is a fine of 1,000 *Paṇas*.—This has to be doubled if the act is repeated. The implication of this is that in the case of all offences, repetition involves double the penalty of the first offence. †

Says *Yājñavalkya* (2.293)—

[800] 'If one has recourse to a *Chāṇḍāla* woman, he should be branded with an ugly mark and banished;—for a similar offence, the *Shūdra* shall be branded only.‡—If a *Chāṇḍāla* has recourse to a noble woman, he should suffer death.'

'*Aṅkabandha*', 'ugly mark', is the mark in the shape of a headless person; with this mark should the man of one of the three higher castes be branded and then banished.

'The *Shūdra* shall be branded *only*';—what this 'only' precludes is *Banishment* only; hence this is not incompatible with the declaration that for having intercourse with a *Chāṇḍāla* woman, the *Shūdra* shall suffer death.

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* According to *Medhātithi*, the *Chāṇḍāla* and the rest.

The law in this matter has been thus summed up by *Medhātithi*:—(*a*) For the *Brāhmaṇa* having intercourse with a protected woman of any of the four castes, the fine shall be 1,000,—in addition to this, for having intercourse with the wife of a Vedic Scholar, there shall be both Banishment and Branding; while in other cases, there shall be Banishment only:—(*b*) for intercourse with an unprotected woman, the fine shall be 500, in addition to Branding and Banishment;—(*c*) for the Non-*Brāhmaṇa*, the penalty is death, for approaching any protected woman;—(*d*) for approaching a willing woman, he shall be fined 1,000 and also be branded and banished.—Though the 'unprotected' woman may be regarded as 'another man's wife' by reason of her having undergone the marriage-rites, yet, in reality, by becoming loose in character, she practically ceases to be her husband's 'wife'.

† According to *Medhātithi*, the *Vrātyā* is the unchaste woman who has had intercourse with several men; or the village slave-girl who has several masters. He has rejected the explanation that the name applies to a girl who has remained unmarried too long.

‡ The *Mitākṣarā* reads '*antyaḥ*' or '*aṅkyaḥ*', and explains the meaning to be that 'the *Shūdra* becomes an *Antya*, i.e. *Chāṇḍāla*.'

For the '*Antya*'—i.e. the *Chāṇḍāla*—having recourse to a 'noble woman' —i.e. a woman belonging to one of the three higher castes,—there shall be death.*

Manu (8.374)—

[801] 'The *Shūdra* having intercourse with a twice-born woman, protected or unprotected, shall be deprived of his limb and his entire property, in the case of the unprotected woman,—and of everything, in the case of the protected woman.'

If a *Shūdra* has intercourse with an *unprotected* twice-born woman,—one of his limbs shall be cut off and his entire property confiscated; the one limb to be cut off in this case is the generative organ; as is clear from the following words of *Gotama*—

[802] 'For having recourse to a twice-born woman, the cutting off of the generative organ and the confiscation of entire property; if the woman is a protected woman, death shall be the further penalty.'

That is to say, if the *Shūdra* has intercourse with a *protected* twice-born woman,—he has to suffer all that has been just said, and in addition, death also. This is what is meant by his being 'deprived of everything' (Text 801).

[803] 'The *Vaishya* shall be imprisoned for a year and then fined 1,000 *Paṇas*; the *Kṣattriya* shall be punished with a fine of 1,000, he shall also suffer the shaving of his head with urine'—(*Manu* 8.375).

For having recourse to a protected *Brāhmaṇa* woman, the *Vaishya* shall be kept imprisoned for one year and then fined 1,000 *Paṇas*; for a similar offence, the *Kṣattriya* shall pay the same fine, and also have his head shaven with the urine of the ass.†

[804] 'If the *Vaishya* or the *Kṣattriya* should have intercourse with an unprotected *Brāhmaṇa* woman,—the *Vaishya* should be fined 500 and the *Kṣattriya* 1,000 '—(*Manu* 8.376).

This is easily understood. The lighter penalty for the *Vaishya* is meant for associating with a *Brāhmaṇa* woman who is as bad as a *Shūdra*; in the case of other *Brāhmaṇa* women, his punishment shall be the same as that for the *Kṣattriya*.

[805] 'The same two, misbehaving with a protected *Brāhmaṇa* woman, should be punished like a *Shūdra*, or burnt in a fire of dry grass'—(*Manu* 8.377).

'The same two'—i.e. the *Kṣattriya* and the *Vaishya*.—'With a *Brāhmaṇa* woman'—*who is endowed with high qualities*; this is what is meant; hence there is no incompatibility with *the penalty of* 1,000 (prescribed in Text No. 803) [which is applicable to cases of the ordinary *Brāhmaṇa* woman].—'Like a *Shūdra*'—i.e. they should have their entire property confiscated, the penis cut off and put to death (as laid down in Text No. 801).—In the event of their being burnt in a fire of dry grass,—'the *Vaishya* shall be

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* The first of these rules applies to the twice-born person who has committed the Adultery and is *unwilling to perform the prescribed expiatory penance*; in addition to the punishment here laid down, the man should also be fined 1,000;—the 'ugly mark' is the sign of the female organ;—in case the man is prepared to perform the expiatory penance, he shall be only fined 1,000—(*Mitākṣarā*).

† For '*sahasram daṇḍyaḥ*', the generally accepted reading in *Manu's* text is '*sarvasvadaṇḍyaḥ*', 'punishable with confiscation of his entire property'.

burnt up in red grass, and the *Kṣattriya* wrapped up in reed-leaves'—as laid down by *Vashiṣṭha*; so that they have to be wrapped up in grass and then burnt.

[806] 'The *Brāhmaṇa* having recourse to a protected *Brāhmaṇa* by force should be fined 1,000; if he meets one who is willing, he shall be fined 500' *—(*Manu* 8.378).

[807] 'In cases where the death-penalty is prescribed, it shall be tonsure for the *Brāhmaṇa*, and actual death for others.'

For the *Brāhmaṇa*, tonsure shall be the 'death-penalty'; for others, it will be actual death.

[808] 'Verily the King should not put a *Brāhmaṇa* to death, even though he be steeped in all sins; he should banish him from his kingdom, unharmed, along with all his property'—(*Manu* 8.380).

This banishment is meant for cases of repetition of the offence in question.

[809] 'There is no sin on earth greater than the killing of a *Brāhmaṇa*; hence the King should not even think of putting him to death.'

This is quite clear.

[810] 'If a *Vaishya* has recourse to a protected *Kṣattriya* woman,—or a *Kṣattriya* to a *Vaishya* woman,—both these deserve the same punishment as that in the case of the unprotected *Brāhmaṇa* woman'—(*Manu* 8.382).

'The same punishment',—i.e. fines of 500 and 1,000 *Paṇas* respectively. —This slight penalty is meant for cases where a highly qualified *Vaishya* has recourse to a *Kṣattriya* woman with no qualifications †; in other cases both are to be fined 1,000.

[811] 'The *Brāhmaṇa*, having recourse to a protected *Kṣattriya* or a protected *Vaishya* woman, should be fined 1,000. A *Kṣattriya* or a *Vaishya* having recourse to a *Shūdra* woman should be fined 1,000 ‡—(*Manu* 8.383).

'*Tē*'—the *Vaishya* and the *Kṣattriya* women.—'*Shūdra woman*'—who is protected.

[812] 'In the case of the *Vaishya* having recourse to an unprotected *Kṣattriya* woman, the fine shall be 500; the *Kṣattriya* shall pay a fine of 500, or suffer tonsure with urine'—(*Manu* 8.384).

That is, if the *Kṣattriya* has intercourse with a protected § *Kṣattriya* woman he should have his hair wetted with urine and then shorn, or he should be fined 500.

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* Even though the woman may have lost her chastity, if she continues to be protected by her father, brother or other relatives,—and a *Brāhmaṇa* has intercourse with her by force,—he should be made to pay 1,000. If, however, the woman is still chaste and protected, the man shall pay the fine of 1,000 and shall also be branded and banished—(*Medhātithi*).

† *Medhātithi's* explanation is different: the heavier punishment for the *Kṣattriya* is justified on the ground that, being entrusted with the task of protecting the people, if he takes to offending against morality, he incurs a greater sin.

‡ According to the *Mitākṣarā* or 2.286 and the *Vīramitrodaya*, p. 507, this refers to cases of women other than the wife of a Teacher or of a Friend.

§ The context would make the *Kṣattriya* woman also *unprotected*; but the printed text and Ma both read '*gupta*'.

[813] 'The *Brāhmaṇa* having recourse to an unprotected *Kṣattriya* woman or an unprotected *Vaishya* woman, or a *Shūdra* woman, should be fined 500; and 1,000 if he has recourse to a woman of the lowest order' —(*Manu* 8.385).

The *Shūdra* woman also is meant to be one who is unprotected.—'*Antyaja*' is one born in the lowest order, i.e. the *Chāṇḍāla* and the rest; if a *Brāhmaṇa* has intercourse with a woman of this order, his fine is to be 1,000 *Paṇas*.

Other Misdemeanours

[814] 'Neither the Mother nor the Father, nor the Wife, nor the Son, deserves to be forsaken; he who forsakes them, without their being outcasts, should be fined 600'—(*Manu* 8.389).

The meaning is clear.

[815] 'If a Sacrificer dismisses an Officiating Priest, or if the Officiating Priest forsakes the Sacrificer,—each being efficient in his work and free from disqualifications—his punishment shall be 100'—(*Manu* 8.388).

This fine of 100 is to be inflicted upon one who does the forsaking in course of the performance,—without any fault of the person concerned.

[816] 'If a *Brāhmaṇa*, through arrogance and greed, makes sanctified twice-born persons do servile work, against their will, he shall be fined 600 by the King'—(*Manu* 8.412).

'*Servile work*'—i.e. work generally done by slaves; e.g. washing of the feet and the like.

Matsya Purāṇa—

[817] 'A man who brings about the meeting (of the man and woman),—and he who provides the place for their meeting,—should be punished like the Adulterer himself.'

That is, the man who helps the woman or the man to meet, and he who provides the place of their meeting,—should both be punished like the Adulterer.

Bṛhaspati—

[818] 'If a man violates a woman forcibly, his entire property shall be confiscated, and having his penis and scrotum cut off, he shall be paraded on an ass.'

[819] 'If a man violates a woman by fraud, his punishment shall be that his entire property shall be confiscated and having been branded with

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* According to *Medhātithi*, this refers to *Brāhmaṇas* only, not to *all* Twice-born men; the meaning is that if a *Brāhmaṇa* makes his fellow-castemen do such servile work as the washing of feet, removing of offal, sweeping and the like, he should be fined 600, if he does so through greed; if he does it through malice, the fine should be heavier.

600—*Paṇas* are meant—says *Aparārka*.

the mark of the female organ, he shall be banished from the city' *—(*Bṛhaspati* 23.10-11).

[820] 'If a man has intercourse with a woman of equal caste, his punishment shall be the last amercement; if with a woman of an inferior caste, half of that; but if a man has intercourse with a woman of a superior caste, he should suffer death'—(*Bṛhaspati* 23.12).

If a man has recourse to an unwilling woman by force, his entire property should be confiscated, and his penis and scrotum being cut out, he should be paraded mounted on an ass.—If one approaches a woman of equal caste, through a messenger and other means,—his punishment shall be the '*last*'—i.e. the *highest*—amercement.—Without having recourse to force or fraud, if a man invites and has intercourse with a woman of the inferior—*Shūdra*—caste, who has had connection with another man, he shall suffer the middle amercement.—If one has recourse to a woman of superior caste, in any manner, he should be put to death.

Says *Manu* (9.233)—

[821] 'If a man violates his Teacher's bed, he should be branded with the sign of the female organ; if he drinks wine, with the sign of the Tavern; if he steals, with the mark of the dog's foot; if he kills a *Brāhmaṇa*, with the mark of the headless man.'

'Stealing' here stands for stealing *gold*.

Yājñavalkya—

[822] 'Within one's own caste, the fine shall consist of the highest amercement; if the man has recourse to a woman of an inferior caste, the middle amercement; if with a woman of a superior caste, the man shall be put to death and the woman's Ear, etc. shall be cut off.'

'*Ear, etc.*'—The 'etc.' includes the Hair. Hence in the case of *Bṛhaspati's* text also (No. 820 above), the 'death' of the man is to be accompanied by the cutting off of the Ears and Hair of the woman.

Viṣṇu—

[823] 'For intercourse with a cow, or with a woman of the lowest order, or with a woman of the highest caste,—the penalty is death.'

'*Antyā*', 'lowest'—untouchable.

Nārada—

[824] 'Mother, Mother's Sister, Mother-in-law, Maternal Aunt, Father's Sister, Aunt, Friend's Wife, Pupil's Wife, Sister, Sister's Friend, Daughter-in-law, Daughter, Teacher's Wife, a *Sagotra* Woman, a Woman Refugee, a Queen, a Female Ascetic, a Nurse belonging to the highest caste;—if a man has intercourse with any one of these, he is to be regarded as a *Violator of the Teacher's Bed*, and for him there is no other punishment except the cutting off of his penis.'

'Mother' here stands for the Father's wife, other than one's own mother.

If one has intercourse with any one of these twenty, his penis should be cut off.

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* The printed text has omitted one text, and made a jumble of the two texts, which are found in *Ma* and also in Jolly's translation. The explanation provided is also defective in the printed text.

This rule is meant for cases where the woman is a 'protected' one.

Yājñavalkya—

[825] 'Father's Sister, Mother's Sister, Maternal Aunt, Daughter-in-law, the Teacher's Wife, one's own Daughter,—if one has recourse to any of these, he is a *Violator of the Teacher's Bed*; his organ should be cut off and he should be put to death; so also the woman if she had been incited with lust.'

From among the six persons here mentioned, if any has been in love with the man and hence has intercourse with him,—she also shall be put to death after having her organ cut off.

Says *Āpastamba*—

[826] 'If a person of noble birth has intercourse with a *Shūdra* woman, he should be ruined.'

That is, if a *Brāhmaṇa* has intercourse with a *Shūdra* woman—who has not had intercourse with any other man—he should be 'ruined'—i.e. banished.

In continuation of the word '*Shūdrasya*', *Gotama* says—

[827] '[If the *Shūdra*] has intercourse with a woman of noble birth, his penis shall be cut off, and his entire property confiscated. If the woman is a protected one, he shall be put to death also.'

'*Woman of noble birth*'—i.e. one belonging to one of the three higher castes.

Āpastamba—

[828] 'If a *Shūdra* has intercourse with a woman of noble birth, he shall be put to death, and his wife shall be confiscated.'

If the *Shūdra* commits the said offence, the King should 'confiscate' his wife,—i.e. *enslave* her.

The method of putting him to death has been laid down by *Baudhāyana*—

[829] 'One should burn the *Shūdra* in a fire of reeds.'

That is, if he has intercourse with a woman of a twice-born caste.

'*Kaṭa*' is reeds.

In continuation with the term 'one having intercourse with a *Brāhmaṇa* woman', says *Yama*—

[830] 'The King shall put the *Shūdra* to death on a heated iron-bedstead; and he should consume the sinner on it by means of wood-logs, leaves and grasses.'

And *Hārīta*—

[831] 'If a man violates the bed of a superior person, the King shall have him bound up and devoured by dogs.'

'*Superior person*'—i.e. one belonging to a higher caste.

'*Violates the bed*'—i.e. has intercourse with his wife.

Says *Gotama*—

[832] 'If a woman has intercourse with a man of inferior caste, the King shall have her devoured by dogs.'

And *Vashiṣṭha*—

[833] 'If a *Shūdra* has recourse to a *Brāhmaṇa* woman, he should be wrapped up in straw and thrown into fire; and the woman's head should be

shaved, and sprinkled with butter and she should be paraded naked on the public road on an ass; it is believed that in this way she becomes purified.—If a *Vaishya* has recourse to a *Brāhmaṇa* woman, he should be wrapped up in reed-leaves and thrown into fire; and the woman's head shall be shaven and sprinkled with butter and she should be paraded naked on the public road on an ass. It is believed that thus she becomes purified.—If a *Kṣattriya* has recourse with a *Brāhmaṇa* woman, he should be wrapped up in reed-leaves and thrown into fire; and the woman should have her head shaven and sprinkled with butter, she should be paraded naked on the public road on an ass. It is believed that thus she becomes purified.—Similarly when a *Vaishya* has intercourse with a *Kṣattriya* woman; or a *Shūdra* with a *Vaishya* or *Kṣattriya* woman.'

'*Mahāpatha*' is public road.
Yama—

[834] 'If a *Brāhmaṇa* woman, maddened with infatuation, has recourse to a *Shūdra*, the King should have her devoured by dogs, at a place occupied by executioners.—If a *Brāhmaṇa* woman has recourse to a *Kṣattriya* or a *Vaishya*, her head shall be shaven and she shall be paraded on an ass.'

'*Occupied by executioners*',—i.e. of men who are in charge of slaughtering-places.
Says *Bṛhaspati*—

[835] 'When a woman comes to a man's house, and having excited his concupiscence by touching him and such other means, makes advances to him,—it is the woman that should be punished; the penalty of the man being only half of it; the nose, ears and lips of the woman shall be cut off, and having been paraded in the streets, she shall be thrown into water; or she may be devoured by dogs in a crowded place.'

In continuation of the term 'should put to death', *Viṣṇu* says—

[836] 'The woman whose husband is impotent, who has never had intercourse with her husband, and who has broken her faith with him.'

All these circumstances taken together constitute an offence that render the woman liable to the death-penalty.

With reference to monetary fines, says *Kātyāyana*—

[837] 'Women who are not independent should not be arrested; it is the man who is at fault; she should be chastised by her own guardian; and the King shall make her over to her guardian.'

'*Arrested*'—for being punished. But the King shall make her over to the man who may be her guardian; that is, the fine leviable on the woman should be realised from her guardian (husband).
Kātyāyana—

[838] 'If a woman whose husband is away is caught misbehaving, she shall be kept confined till her lord comes back.'

'*Abhīgraha*'—is misbehaviour, adultery.
In the *Matsya-Purāṇa*, we read—

[839] 'If a man forcibly violates the wife of another man in any manner, his penalty shall be death, and no blame would attach to the woman.'

Penalties for Prostitution

Vyāsa—

[840] 'For intercourse with a woman kept by another man, the punishment is a fine of 50 *Paṇas*; and for forcible intercourse with a prostitute, the fine has been declared to be 10 *Paṇas*.'

'*Parāvaruddhā*' is a harlot who has been kept by one of her paramours.
Yājñavalkya—

[841] 'For forcible intercourse with a slave-girl, the penalty has been declared to be 10 *Paṇas*. If several men have intercourse with her without her consent, each of them shall be fined 24 *Paṇas*.'

[842] 'A man having misplaced intercourse with a woman,—or having, through intense passion, intercourse with a male,—or with a female ascetic,—shall be fined 40 *Paṇas*.'

(*a*) If several men have intercourse continuously with the slave-girl without her consent,—each of them shall be fined 24 *Paṇas*;—(*b*) if one makes thrusts into the woman's mouth or other wrong places;—(*c*) if he has intercourse with a male, through intense passion.—'*Pravrajitā*' is the female ascetic.
Says *Nārada*—

[843] 'For having recourse to an animal, the fine is 100;—in the case of cows, the middle amercement; and the same in the case of *Chāṇḍāla* women.'

'*Atikrāman*'—Having recourse to;—he should be fined 100 *Paṇas*.
Again—

[844] 'A *Brāhmaṇa* having recourse to a cow should be fined one *Suvarṇa*.'

The 'middle amercement' (laid down in Text 843) is for the *Vaishya* and the *Kṣattriya*; because for the *Shūdra*, death has been previously prescribed as the penalty for the same offence [vide *Viṣṇu's* Text, No. 823 above]; and as for the *Brāhmaṇa*,—'*manujottama*'—the subsequent line (Text 844) has laid down one *Suvarṇa* as the penalty.
Again—

[845] 'A twice-born man having recourse to a prostitute should be fined the same amount as the fee of the prostitute.'

The 'Prostitute's Fee' is 500 *Paṇas*; this same amount shall be the fine imposed upon a *Brāhmaṇa* having recourse to a prostitute.
Says *Vyāsa*—

[846] 'If wicked men have recourse to a woman who has been previously enjoyed by several men,—the woman shall be punished like a prostitute, not like another man's wife.'

'*Dāravat*'—i.e. like the regular wife of man of family.*

Nārada—

[847] 'For one having recourse to a woman intercourse with whom is not right, proper punishment shall be inflicted by the King; as regards the declaration of the Expiatory Rites, that is only meant to be purificatory of the sin involved.'

As for the following text—

[848] 'Having committed sins, if men are punished by Kings, they become free from sins and go to heaven, in the same way as good and righteous men'—(*Manu* 8.319)—

this refers to 'punishment' in the shape of *Expiation*, as is clear from the context in which the text occurs; as in the *Kalpataru*, the text has been quoted in the section dealing with the rule that the stealer of gold should be killed with a bludgeon.†

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* Vāchaspati Mishra has apparently read and understood this text wrongly; the reading found in other places is '.... *gachched yastām narādhamaḥ tasya vēshyāvadichchanti* ....'; which means—'if a man has recourse to a woman as described, he is to be fined as for intercourse with a prostitute, not as for intercourse with another man's *wife*'.—This right reading is found in *Vivādaratnākara*, p. 405 also.

† In the *Manusmṛti* itself, it is in the same context that this particular text occurs. It is interesting to note that Vāchaspati Mishra invokes the *Kalpataru*, and not the original *Smṛti* itself.

CHAPTER XVI

Duties of Men and Women

Preliminary Note

"Though the appearance of Husband and Wife as Plaintiff and Respondent at the Royal Court has been forbidden,—yet it is quite possible that the King may have to hear indirectly of their dereliction of duty towards each other; and in that case it becomes his duty to bring them to the path of righteousness; or otherwise, to punish them. This is the reason why this subject has been brought in as a *Head of Dispute*"—*Vivādaratnākara* (page 409).

Says *Yājñavalkya* (1.85)—

[849] 'During maidenhood, the girl shall be protected by her Father, when married, by her Husband, and in old age by her Sons; in the absence of these, by her relations; and the woman has no independence anywhere.'

'*Vinnā*'—married;—'*these*'—i.e. Sons.
Says *Bṛhaspati*—

[850] 'If the Father does not give her away in time,—if the Husband does not approach her "in season",—and if the Son does not supply the Mother with food,—each one of these deserves to be despised and punished under the law.'

Manu (9.14)—

[851] 'They seek not for beauty; nor have they any regard for age; with or without beauty, it is the man that they long for.'

Again—

[852] 'During girlhood the woman fears her husband; during youth she feels attracted towards him; in old age she cares not a straw for him.'

[853] 'If she is allowed to go about freely and is not restrained by love, she, ultimately, becomes positively dangerous; just like a disease that is ignored.'

Again—

[854] '*Manu* assigned to women Bed, Sitting, Ornament, Lust, Anger, Dishonesty, Malice and Bad Conduct'—(*Manu* 9.19).

[855] 'Knowing such disposition to be innate in them, from the very creation by the Lord,—the Man should make the best effort to guard them'—(*Manu* 9.16).

Manu (8.335)—

[856] 'Be he his Father, or Teacher, or Friend, or Mother, or Wife, or Son, or Family Priest,—there is none who, straying from the path of duty, does not have to be punished.'

[857] 'In a case where an ordinary man should be fined one *Kārṣāpaṇa*, the King should be fined a thousand; such is the law.'

'*Kārṣāpaṇa*'—the Copper Coin is meant.

The fine imposed upon himself the King shall throw into water,—according to the implication of the following declaration by *Gautama*—

[858] '*Varuṇa* is the lord of penalties.'

Says *Manu* (8.139)—

[859] 'On the debt being admitted to be due, the Debtor shall pay a fine of 5 per cent; and in the case of denial, twice as much; such is the teaching of *Manu*.' [Vide above, Text No. 141.]

When asked for repayment, if the Debtor denies the liability at home, but subsequently, on the suit being filed, he admits it,—he should be fined 5 per cent of the total sum; and if, even on being sued, he denies his liability,—if the debt is proved by means of proofs, he should be fined at the rate of 10 per cent.

In connection with *Witnesses*, says *Manu*—

[860] '[He who deposes falsely] through *Greed*, should be fined a thousand; if through embarrassment, the lowest amercement;—if through fear, two *middle* ones; if through friendship, four times the *first*; if through lust, ten times the *first*; if through anger, three times the next; if through ignorance, full two hundred; and if through childishness, only a hundred. —They declare these penalties for false evidence to have been declared by the wise ones, for the purpose that justice may not fail and injustice may be prevented.—The righteous King shall fine and then banish the three castes giving false evidence; but the *Brāhmaṇa* he shall deprive of his clothes (and dwelling).'

(*a*) If one gives false evidence, through Greed, he shall be fined 1,000;—(*b*) if he does so, through embarrassment, 250 *Paṇas*;—(*c*) if through fear, 1,000 *Paṇas*;—(*d*) if through friendship, 1,000 *Paṇas*;—(*e*) if through lust,—i.e. through desire for the company of the woman concerned,—2,500 *Paṇas*;—(*f*) if through anger, 3,000 *Paṇas*;—(*g*) if through ignorance, 200 *Paṇas*;—(*h*) if through childishness,—i.e. through carelessness,—100 *Paṇas*.—Such is to be the punishment for giving false evidence.—

'*The three castes giving false evidence*'—that is, when a *Kṣattriya* or a *Vaishya* or a *Shūdra* witness gives false evidence *repeatedly*,—they should be fined as aforesaid and then banished from the country; if the same offence is committed by a *Brāhmaṇa* however, he should be only banished—being allowed to take all his property with himself.

Manu (8.139)—

[861] 'Two Hundred and Fifty *Paṇas* constitute the First Amercement; 500 *Paṇas*, the Middle Amercement; and 1,000, the Highest Amercement.'

Again—

[862] 'If the seller is related to the rightful owner, he should be made to pay 600; if he is not related, nor one having rightful access to the property,—he should be dealt with like a thief'—(*Manu* 8.198).

[863] 'In this way should a man be punished for selling things without ownership, unintentionally; if he does it intentionally, he should be punished like a thief.'

'*Avahāryaḥ*'—made to pay.—'*Sānvayaḥ*'—related to the owner;—'*niranvayaḥ*'—other people, not related to the owner.—'*Anapasaraḥ*'—the way by which property moves from one to another, i.e. gift and so forth; one who has no such 'access', means of getting at the property concerned.—'*Chaurakilviṣam*'—penalty for theft.—'*Anēna, etc.*',—what is meant is that even when the man is related to the rightful owner,—such as his Brother,—if he sells the property intentionally, he should be punished like a thief.

Again—

[864] 'When a man gives money for a pious purpose to another who has asked for it,—if, subsequently, it is not used for that purpose, then, it shall not be given to him'—(*Manu* 8.212).

[865] 'If, through arrogance or greed, the man should seek to recover the gift,—he should be made by the King to pay one *Suvarṇa*, as an expiation for that theft'—(*Manu* 8.213).

'*Subsequently, etc.*'—If the man who asked for it did not perform the pious act, and yet he received the money, then he should be made to refund it.—In case the money had been promised (and not given), if the man should seek to recover it, then it should not be given to him; in case he takes it, he should be fined one *Suvarṇa*.

CHAPTER XVII

Inheritance—Partition

SECTION (A)—TIME OF PARTITION

Manu has laid down the principal time at which partition is to be made—

[866] 'After the death of the Father and of the Mother, the Brothers, having come together, shall divide equally (among themselves) the parental property. While the Parents are alive, they have no power'—(*Manu* 9.104).

'*Samam*'—Equally. That is, there is no deduction of the 'twentieth part' (preferential share of the eldest Brother).

It cannot be right to argue that—"When *Manu* (in 9.112) has declared the deduction of the Twentieth Part, it is only in reference to partition among persons whose father is dead; how then can there be an *equality* in the shares?'—Because the said declaration of *Manu* has been made in reference to cases where the eldest Brother is possessed of special qualifications,—or in reference to cases where the eldest Brother is specially desirous of having the Twentieth Part as his preferential share.

Objection—"That property which is in the independent possession of the Father,—of that there could be partition during his lifetime only if he wished it; so that it may be that the Sons shall make the partition after the *Father's* death; but why should the death of the *Mother* be condition precedent to the partition? The Mother has no right over the property.—It would not be right to argue that on account of the declaration of *Shaṅkha*—

[867] 'That in the matter of partition people whose Fathers are living are not independent so long as the Mother is living'—

the death of the Mother must be a condition precedent to partition. Because this assertion of *Shaṅkha's* is only in praise of a Mother possessed of exceptional qualities. And certainly to make the partition dependent upon one who has no right over the property cannot be reasonable."

Answer—In the word '*paitṛkam*', the term '*pitṛ*' stands as an Ēkashēṣa compound and hence denotes both the Father and the Mother; so that the *Mother's* property also becomes indicated; and it is in the partition of this property that the Mother's death is a condition precedent.*

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* That 'they have no power' is in reference to the Father's self-acquired property—says *Vivādachintāmaṇi* later on, under Text No. 877.

The Father's property is to be divided after the Father's death and the Mother's property after the Mother's death; such is the view of other *Smṛtis* also. But as regards the Mother's property, the Sons are to receive it only if there are no Daughters.—'*They have no power*'—this implies that even during the lifetime of the Parents, the property may be divided *with their permission*—(*Sarvajñanārāyaṇa*).

The Brothers, coming together, should divide, in equal shares, the Father's property after the Father's death and the Mother's property after the Mother's death. In view of the other text laying down an 'additional portion' for the eldest Brother, the present assertion of equality of the partition should be understood as referring to cases where the eldest Brother does not desire to have the additional portion. . . . If the Father so wishes, the division of his property may be

The following objection might be urged—"According to the following text of *Nārada* (13.2)—

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made during his lifetime also; as has been expressly declared by *Yājñavalkya* (2.114)—(*Kullūka*).

The death of the Parents is productive as well as indicative of the ownership of the Sons.—The term 'after the death' indicates also such circumstances as *becoming outcast* or a *renunciate* and so forth, these conditions being as destructive of ownership as death itself.—'*In equal shares*';—but this also only when the Father wishes it so; as asserted by *Yājñavalkya* (2.114)—(*Rāghavānanda*).

'*After the Father's death*',—this indicates the time for the dividing of the Father's property; and '*after the Mother's death*' indicates the time for the dividing of the Mother's property. Hence it follows that even while the Mother is living, the Father's property may be divided on the Father's death, and *vice versa*. This naturally implies that the Father's property cannot be divided while the Father is alive, nor the Mother's property while she is alive—(*Smṛtichandrikā*, p. 598).

'*Equally*', '*samam*',—that is, there is to be no setting apart of the twentieth part for the eldest Brother.—This may be held to be inconsistent with what *Manu* himself has declared regarding the twentieth part being set apart for the eldest Brother. But in reality, there is no inconsistency; as this latter declaration refers to very special cases, where the eldest Brother may be possessed of exceptionally good qualities.—*Udayakara* has explained the meaning of the present text to be that the 'equal' division is to be made of the property *after* its twentieth part has been set apart for the eldest Brother.—*Halāyudha* and *Pārijāta* have read '*saha*' in place of '*samam*', and the latter has explained it as 'among themselves' [so in this case the difficulty regarding 'equal' shares and the 'twentieth part' does not arise].—'*Paitṛkam*'—includes the Mother's property also, says *Halāyudha*.—Though the term used is '*Paitṛkam*' (*Paternal* or *Parental*), yet the property of the Grandfather, etc. is also meant to be included; as 'property acquired by the Grandfather' has also been declared to be what should be partitioned;—such is the view of others.—As a matter of fact, both of these—the Mother's property and the Grandfather's property—are meant to be included; but in regard to the Mother's property its partition among the *Sons* should be possible only if she has left no *Daughter* or *Daughter's offsprings* (see following Text No. 868)—(*Vivādaratnākara*, p. 455).

This text puts out of court the view that ownership is created by birth itself. Because the only possible reason for the Sons not being entitled to divide the property while the parents are living is that during the parents' lifetime, the ownership of the Sons is not there at all—(*Dāyabhāga*, p. 11).—This text indicates that the ownership of the Sons comes into existence only on the death of the parents—(p. 16);—that during the Father's lifetime, there can be no partition except at the wish of the Father—(p. 28).—After the Father's death also, even though the Sons have acquired ownership over the property, it is not right for them to divide it among themselves while their Mother is living; it is only on the death of both Father and Mother that the Father's property should be divided by the Sons among themselves.—There is no reason for taking the term '*paitṛkam*' as standing for the property of *both Parents*, and for taking the text to mean that 'the Father's property is to be divided on the Father's death and the Mother's property on the Mother's death'; in fact, that the Mother's property is to be divided on the Mother's death is declared by *Manu* in another text (9.192)—(*Dāyabhāga*, p. 58).

Even though the particle '*cha*' is there, the death of *both* parents is not meant to be necessary for the division of the Father's property. As the *Saṅgrahakāra* has definitely declared that 'the Father's property may be divided even while the Mother is living, since the Mother, apart from her husband, has no ownership over the property'. Similarly the Mother's property may be divided on her death, even while the Father is living, because so long as the woman's children are there, her husband has no ownership over her property—(*Vyavahāramayūkha*, p. 94).

This text clearly indicates that the Sons have no ownership over the property of the parents while the latter are alive (p. 525).—What is meant is that the time for dividing the Father's property is after the Father's death, and that for dividing the Mother's property, after the Mother's death. The particle '*cha*' indicates the possibility of other times for partition; it does not mean that both the parents should die before the property is divided, because the fact of the Mother being alive can be no bar to the dividing of the Father's property; nor can the fact of the Father being alive be a bar to the dividing of the Mother's property.—The assertion that 'they have no power' only means that they are not free to do what they like, and not that

[868] 'After the Father has died, the Sons shall divide the Father's property; and the Daughters shall divide the Mother's property; and if the Daughters are not there, then their offspring' * ;—

it is clear that the persons entitled to the Mother's property are the Daughters, and in their absence, the Daughter's sons; so that the Sons can have no right to take that property."

But that is not so; because this text of *Nārada's* does not preclude the connection of others [it only asserts the right of the Daughter and her sons].—It is for this reason that *Manu* has spoken of both (Sons and Daughters) together, in the following text—

[869] 'When the Mother has died, all the uterine Brothers and uterine Sisters shall divide the Mother's property equally'—(*Manu* 9.192).†

Thus the Property is under the sole ownership of the Father, and it can be divided by the Sons only after his death, or even during his lifetime if he has become disabled; as has been declared in the following text of *Shaṅkha*—

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they have no ownership; because the ownership of the Sons over their Father's property comes with their birth—(*Vīramitrodaya*, p. 550).

The meaning of the text is this: After the Father's death, the Father's property may be divided, even though the Mother may be living; and similarly on the Mother's death, the Mother's property may be divided, even though the Father may be living. There would be no point in waiting for the death of both parents before dividing the property of any one of them—(*Parāsharamādhava*, pp. 326-327).

* The term '*putrāḥ*' (Sons) serves to indicate that all kinds of Sons—even the *Kṣetraja*—are meant to be included; so what the text means is that, if any of the twelve kinds of Sons is there, no one else is entitled to the property.—'*Pituḥ*', 'of the Father', is meant to show that if there is any property acquired by any of the Brothers through learning and such other means, that is not meant to be divided along with the Father's property.—The Daughters shall divide among themselves the Mother's property;—if there are no Daughters living, then their offspring shall divide the property among themselves; the pronoun '*tat*' in the compound '*tadanvayaḥ*' ('their offspring') must refer to the Daughters which is the noun nearest to it. Such also is the opinion of *Lakṣmīdhara*. The *Prakāsha* and the *Pārijāta* have explained '*tadanvayaḥ*' as 'the son, grandson and so forth of the Daughter'; i.e. the Daughter's *male* issue, not the *female* issue—(*Vivādaratnākara*, p. 456).

The text may be taken to mean that, before they partition the property, the Sons have no ownership over it, and yet the partition could not be the source of ownership.—But the answer to this is that, inasmuch as it is only after the Father's death that the Sons speak of the property as *own*, it is the Father's death that is to be regarded as the source of their ownership—(*Dāyabhāga*, p. 11).

† *Mātṛkam*'—Mother's property, other than her *Strīdhana*.—'Sisters',—those that have no sons.—(*Sarvajñanārāyaṇa*).

When the Mother has died, the uterine Brothers and such uterine Sisters *as are unmarried* shall divide the Mother's property among themselves; the *married* Sisters receiving some honorific present in keeping with the property. Each of the Brothers shall give to the married Sister the fourth part of the Mother's property, just as they give to the unmarried Sister, the fourth part of the Father's property—(*Kullūka*).

This text lays down what is to be done in cases where the Mother dies before partition. As regards the *unmarried* Daughters, there is this difference that out of the Mother's property their share shall be equal to that of the Sons, but in the Father's property their share shall be only the fourth part of the Son's share—(*Rāghavānanda*).

The 'Sisters' meant here are those that are *unmarried* or poor—(*Vivādaratnākara*, p. 515; also *Vibhāgasāra* 11.1-11).

The particle '*cha*' may be taken as implying that the rights of the Brothers and Sisters are equal. But this can apply only to property other than the Mother's *dowry*, which goes *entirely* to the Sisters or their sons—(*Dāyanirṇaya* 23.2-4).

[870] 'Even when the Father is unwilling, the property may be partitioned, if he is too old or of perverted mind or an invalid.'

'Of perverted mind'—i.e. with mind very much perturbed with disgust. So long as the Father is alive and fit, the property can be partitioned only with his permission; this is going to be declared later on.*

Another alternative course open to the Sons, on the death of their Father, is that they should place the eldest Brother at their head and live under him; this is what *Manu* has declared in the following text—

[871] 'The eldest Brother alone may take the entire paternal property; the others shall live under him, just as under their Father'—(*Manu* 9.105).†

Or, the Brothers may place themselves under any one of themselves who happens to be most capable; this is what has been thus declared by *Nārada* (13.5)—

[872] 'The eldest Brother, or the youngest Brother, shall support all the others, like a Father, if they so wish it,—in accordance with his capacity; the well-being of the family is dependent upon the capacity of its head.' ‡

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* Even though the Mother may not be past the child-bearing age, even if the Father be unwilling,—if he happens to be unrighteous in his ways of life or attacked by a protracted disease,—the property may be partitioned by the Sons—(*Mitākṣarā*, pp. 617-618).

[On this, the *Bālambhaṭṭī*—'Protracted'—i.e. incurable.—'*Unrighteous*'—this explains the term 'perverted mind'.]

The simple meaning of the text is that even when the Father is unwilling, there may be partition under certain circumstances—(*Vyavahāramayūkha*, p. 96).

† What is said here applies to cases where the eldest Brother is possessed of superior qualifications—(*Sarvajñanārāyaṇa*).

This applies to cases where the eldest Brother is exceptionally righteous. The eldest Brother shall take all the property that belonged to the Father; the younger ones shall depend upon him for their food and clothing. This means that all the Brothers shall live together—(*Kullūka*).

This text sets forth an alternative to what has been declared in *Manu* 9.104, to the effect that the Brothers shall divide the property equally among themselves—(*Nandana*).

This text should be taken as advising co-residence of the inexperienced younger Brothers with the experienced eldest Brother till they grow up; it should not be taken in the literal sense that there shall be no division of property among the several Brothers of the same caste—(*Smṛtichandrikā*, p. 615).

This text should be taken as applicable to cases where the younger Brothers have not completed their studies, or are still minors, or are not entitled to share the property by reason of being insane or otherwise disqualified—(*Aparārka*, p. 615).

The meaning is that, if the eldest Brother is possessed of all the qualities of the 'eldest', he should be as complete a master of the partible property as the Father; and the others shall live upon livings provided by the eldest Brother—(*Vivādaratnākara*, p. 457).

This is meant to indicate that it is not necessary that the Brothers *must* divide after the Father's death—(*Vivādachandra* 19.2.2).

On the Father's death, the eldest Brother is entitled to inherit the property (p. 20).—The meaning is that, if the Brothers wish to live together, then the eldest Brother, who is capable of looking after the family, shall take the entire property and the rest shall live under him—(*Dāyabhāga*, p. 62).

What is meant is that it is highly commendable that all the Brothers should live together under the highly qualified eldest Brother (p. 557).—Here co-residence has been commended as the principal alternative to be adopted by the Brothers—(*Vīramitrodaya*, p. 563).

‡ This refers to cases where all the younger Brothers are unable to manage their affairs—(*Smṛtichandrikā*, p. 615).

Or, the Brothers may divide the property for pious purposes; as declared by *Manu* (9.111)—

[873] 'Thus may they live, either jointly, or separately, with a view to pious purposes; piety prospers by separate living, hence separation is meritorious.' *

In what way *Separation* augments piety has been thus explained by *Bṛhaspati* (25.6)—

[874] 'For those who live and mess together, there is only one common worship of *Pitṛs*, Deities and *Brāhmaṇas*; for those who have separated, it should take place in each home separately.'

When the property has been divided and each one is in sole and undivided possession of his property, he can proceed with the performance of sacrifices, according to his own wish, without regard to the other co-sharers,—and when the sacrifices are thus performed, there is augmentation of merit, which thus is due to separation (division of property).†

The youngest Brother, if competent, may support the others. The middlemost Brother also becomes naturally included under this. The meaning is that the Brothers may live together and not divide, if they so wish it—(*Dāyabhāga*, p. 62).

The middlemost Brother also becomes included—(*Smṛtitattva* II, p. 170).

* Inasmuch as no one voluntarily incurs any responsibilities regarding the performing of *Jyotiṣṭoma* and other sacrifices, the text recommends separation, with a view to the performance of such acts. It is not meant that non-separation is sinful; all that is meant is that separation is meritorious—(*Medhātithi*).

Brothers, not divided, should live together; but with a desire to acquire spiritual merit, they should divide and live separately; if they live separately, each of them performs separately the five 'Great Sacrifices' and other religious acts and thereby Piety prospers—(*Kullūka*).

'*Dharmyā*'—with a view to piety, not for the purpose of attaining independence —(*Rāghavānanda*).

After all the Brothers have completed their study and become competent to perform the *Agnihotra* and other rites, it is better that they should separate (p. 719). —It is not meant that after the death of the parents, they *must* separate—(*Aparārka*, p. 722).

Inasmuch as joint property cannot be used by any coparcener as he wishes, there can be no performance of any such rites as the *Agnihotra* which could be performed with only such wealth as belonged to one's own self; for this reason, the present text lays down *separation* as right and proper for the purpose of the accomplishment of these rites. . . . It does not mean that if they did not separate, they would incur sin; all that is meant is that separation brings about additional merit—(*Vivādaratnākara*, p. 459).

The terms '*sa-pṛthagvā* and '*kāmyayā*' serve to indicate that the wish of the Brothers is the determining factor—(*Dāyabhāga*, p. 21).

Living together has been commended; but for the purpose of augmenting Piety, separation should be effected. '*Dharma*' here stands for such pious acts as the worshipping of deities, etc. as it is only such acts with regard to which it has been declared by *Bṛhaspati* (below Text No. 874) that they should not be performed separately while the Brothers are living together—(*Vīramitrodaya*, p. 557).

† So long as, by reason of their being too young, the property of the younger Brothers has not been separated from that of the eldest Brother,—there is no separate performance by them of such rites as the *Vaishvadēva* and the rest—(*Aparārka*, p. 719).

'*Mess together*'—i.e. so long as there has been no separation (*Vivādaratnākara*, p. 459).

Section (B)—Partition during Father's Lifetime

In continuation with the words 'The Sons should divide',—says *Nārada* (13.3)—

[875] 'When the menstruation of the Mother has ceased, when the Sisters have been given away, or when the Father's capacity for enjoyment has ceased, or when the Father has ceased to have any desires.'

'*Prattāsu*'—'given away'—married.—'*Ramaṇē*'—The Father's capacity for enjoyment.—'*Uparataspṛhē*'—has ceased to have any desire for things.*

Yājñavalkya (2.114)—

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* In the *Prakāsha*, in place of '*nivṛttē ramaṇē*', two other readings have been accepted: (1) '*nirapēkṣē ramaṇē*' ('the husband having become indifferent'), and (2) '*nirastē chāpi ramaṇē*' ('intercourse having been given up'); and *Halāyudha* has adopted the reading '*ramaṇāt*' in place of '*ramaṇē*', which means 'after the husband has desisted from intercourse'. None of these readings, however, makes any difference in sense—(*Vivādaratnākara*, p. 462).

'*Vinaṣṭē*' (i.e. for '*nivṛttē*')—becoming an outcast;—'*asharaṇē*' (v.l. for '*ramaṇē*') —gone out of the Householder's State.—If we adopt the reading '*nivṛttē vapi maraṇāt*', the meaning would be—'the Father having receded from death, i.e. being alive, but free from all desires'.—Here also the implication is that the fact of the Father being free from all desires brings about the ownership of the Sons over the Father's property; and so this also would be an occasion for the partition of the property (pp. 18-19).—This refers to property coming down from the Grandfather and other ancestors.—When menstruation has ceased and there is no chance of any other Sons being born,—there would be partition among the Sons *only if* the Father wished it.—If the ancestral property were divided before the Mother had passed the child-bearing age, those Sons that would be born after that partition would have no means of subsistence.—(1) On the Father becoming an outcast, or free from all longings, or dying, his ownership over the property ceases; so this is the *first* occasion for partition.—(2) The *second* occasion for it would be when the Father being alive and his ownership being intact, he wishes to have the partition made.—(3) 'The Mother having passed the child-bearing age'—refers to the ancestral property; there being no chance of another Son being born, this would be the *third* occasion for partition, only if the Father desired it.—The condition of the 'Sisters having been given away' is not meant to be an occasion for partition; it is meant only to emphasise the necessity of the Sisters being married—(*Dāyabhāga*, p. 24).

What is meant is that the Sons shall divide the Father's property—(*a*) when it has become definitely certain that the Parents have lost the capacity for begetting any more children,—(*b*) when the marriage of the female children has been performed, —and (*c*) when the Father has lost all desire for possessions. *Baudhāyana*, however, has declared the agency of the Father in this division also—'Property can be partitioned with the consent of the Father'—(*Smṛtichandrikā*, pp. 605-606).

'*Ramaṇa*' stands for *sexual desire*;—'*uparataspṛhē*'—become free from attachment;—'*the Sisters being married*'—is to be construed with the 'cessation of Mother's menstruation', as also with the 'cessation of sexual desire'; that is, provision for the Sisters' marriage must precede the division of property, under both these circumstances—(*Vyavahāramayūkha*, p. 95).

'*Ramaṇa*'—intercourse with woman.—'*Spṛhā*'—longing for wealth—(*Madanapārijāta*, p. 647).

This text commends partition at the time stated. The meaning is that—when the Mother has ceased to menstruate, and the Father has become free from all desires,—even though he may not by himself have accorded his consent,—such consent should be secured by the Sons somehow and the partition made—(*Vivādachandra* 19.2-4).

This text mentions the *second* occasion of partition (the first occasion being the *Father's death*); what is meant is that even during the Father's lifetime, if he has ceased to have any desires and consequently given up all pleasures, and the Mother has passed the child-bearing age, the partition can be made by the wish of the Sons themselves—(*Mitākṣarā*, pp. 615-616).

[876] 'If the Father makes the division, he shall divide the Sons according to his wish; he may assign a superior share to the eldest, or all may have equal shares.' * (See Text 880 below.)

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* When the Father, desiring to enter upon the next life-stage, proceeds to make a division of his property among his Sons,—with a view either to afford such of them as are possessed of superior qualities an opportunity for the performance of religious rites, or to mere curiosity on his own part,—he may give to any Son whatever he likes to give him; and he should not be guided by the wish of his Sons. Thus if he considers it right and proper, he may allot a superior share to the eldest Son,—or more or less as he likes; or he may make all the Sons equal sharers. In any case the Father's own wish should be the determining factor—(*Vishvarūpa*).

'*Vibhāga*', 'division', is the making or allotting of shares in the property of the Father and other ancestors with reference to the Sons and other heirs.—In regard to this, the general rule is that 'the Father shall divide the Father's property'; under special circumstances, the Sons also do the *dividing*.—What the present text means is that—'if the Father makes the division, he should divide the property among his Sons giving to each of them more or less as he pleases'; the term '*ichchhayā*', 'according to his wish', is meant to emphasise the fact that it is open to the Father to give more to one and less to another Son. This unequal division has been sanctioned by several texts. . . . . The implication of this is that the wish of the Sons cannot bring about the division.—This text applies to the Father's *self-acquired property*; because in regard to the property acquired by the Grandfather and other ancestors, the right to partition belongs equally to the Father and the Sons—(*Aparārka*).

When the Father wishes to make the partition, he should 'divide'—from himself—'according to his wish'—'the Sons',—i.e. one, two or more as the case may be.—The text lays down a restriction—'he shall assign a superior share to the eldest'; which means that he shall give the best share to the eldest, the middling share to the middlemost and the lowest share to the youngest.—The 'superior share' has been indicated by *Manu* 9.112.—The particle '*vā*', 'or', is in reference to the next alternative—'or all may have equal shares'.—The said unequal division pertains to the self-acquired property of the Father; because in regard to the ancestral property, the rights of the Father and Son being equal, there would be no propriety in any unequal division made by the Father arbitrarily.—'If the *Father makes the division*';—this indicates that one occasion for partition is that when the Father wishes to do it.—Another occasion for partition has been mentioned by *Nārada* (see Text No. 875 above), and also by *Gautama*.—The third occasion for partition is that when the Father is found to be addicted to unrighteous ways, or has become a chronic invalid, when, even though he may be unwilling, the Sons may divide the property by their own wish: as has been declared by *Shaṅkha* (see Text No. 870 above).—This text refers to the Father's self-acquired property—(*Mitākṣarā*, p. 647).

This text describes the division made by the Father during his lifetime. If the Father makes the division of the property that he has himself acquired, or which he has recovered from strangers,—then he may divide it in any way he chooses . . . . Apart from the property so acquired or recovered by the Father, if there is any other property, in that all the Sons shall have equal shares—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

There are two methods of partition—(1) the absolutely equal division, and (2) the assignment of a superior share to the eldest Son and the equal division of the rest; in any particular case which of these two methods shall be adopted should depend entirely on the Father's wish; and the wish of the Sons shall have nothing to do with it—(*Smṛtichandrikā*, p. 609).

This refers to the Father's self-acquired property; because over the ancestral property, the rights of the Father and Son are equal—(*Vivādaratnākara*, p. 464).

There are four occasions for partition:—(1) During the Father's lifetime, whenever he wishes it;—(2) when the Mother has ceased to bear children and the Father has become averse to worldly desires, when the Sons evince a desire for partition, even though the Father may not wish it;—(3) though the Mother may not have ceased to bear children, though the Father may not desire partition, yet if the Sons desire it, by reason of the Father becoming too old or addicted to evil ways or attacked by incurable disease;—(4) after the Father's death—(*Madanapārijāta*, p. 645).

That the said wish of the Father prevails only in the case of his self-acquired property is clearly asserted by *Viṣṇu* (17.1.2) in the following text—

[877] 'If the Father should divide his sons, his wish shall prevail in regard to his self-acquired property.'

'*Svayam upātta*'—self-acquired, acquired by himself;—so also what has been *recovered* by himself; according to the declaration of *Manu* (in the following Text 878). In this matter of 'self-acquired' property, the necessary condition is that it should *not* have been acquired through the ancestral property; because what is acquired through the ancestral property is common property (between the Father and the Sons), like the ancestral property itself. Hence the Father is the sole authority, in regard to what he has himself acquired, without the help of the ancestral property, as to the division being equal or unequal. In connection with such property, the partition shall depend entirely on his own wish; and it is only over this property that the Sons 'have no power' (as declared by *Manu* in Text No. 866).

Manu (9.209)—

[878] 'If the Father recovers a lost ancestral property, he shall not, unless he so wishes, share it with his sons; so also as regards his self-acquired property.'

That is, even in the case of ancestral property, if something had been taken possession of by others,—and the Father has recovered it from them,—as also what he has himself acquired,—in both these cases, there can be partition only if the Father wishes it, not when he is not willing.*

The unequal division mentioned here refers to the Father's self-acquired property; in the ancestral property, the Sons and the Father having equal rights, any arbitrary division by the Father would be wrong—(*Parāsharamādhava*, pp. 332-333).

It has been declared that—'So long as the faultless Father is there the Sons have no rights of ownership'; where the qualification 'faultless' indicates that if the Father happen to be beset with such defects as being an outcast and the like, the Sons are no longer subservient to him; so that if they desire partition, then that would be an occasion of partition, on which occasion the Sons would be the makers of the partition—(*Vīramitrodaya*, p. 551).

(*a*) Partition entirely according to the Father's wish refers to the Father's self-acquired property;—(*b*) the division with the 'superior share',—i.e. the ordinary share along with the Twentieth Part—for the eldest, as also the equal division,—pertains to the ancestral property—(*Smṛtitattva* II, p. 166).

The second line explains what is meant by 'division according to the Father's wish'. So long as this interpretation is possible, whereby the Father's choice is limited to the two methods (specified in the second line), it cannot be right to take the first line as setting forth an independent alternative in the form of an entirely arbitrary division; specially because, if such an option were admissible, it might be possible to have such an absurd division as would give a *lakh* to one Son and a single shell to the second and absolutely nothing to the third—(*Vyavahāramayūkha*, p. 97).

* In addition to what he has inherited, the Father recovers some such ancestral property as had become lost; he shall not, unless he wishes it, share such property with his Sons, even after these latter have attained their majority. An occasion for such sharing would arise when the Father himself proceeds to make the division among his Sons. . . . . As a matter of fact, even in the case of his self-acquired property, the Father himself divides it among his Sons as soon as they have attained their majority and the Father finds them duly qualified—(*Medhātithi*).

This implies that the ancestral property that has come to him without any effort shall be divided among the Sons when these latter wish.—(*Sarvajñanārāyaṇa*).

Such property would be the *self-acquired* property of the Father—(*Kullūka*).

There has been some ancestral property which none of his predecessors had been able to recover;—if the Father succeeds in recovering it, it is his self-acquired

Again—

[879] 'The property belonging to the Grandfather, which has been lost but subsequently recovered by the Father by his own power,—as also what has been acquired by him through learning, valour and such other means,—over all this the Father's ownership has been declared.—Out of all this, he may make gifts or even enjoy it at his will. But on his death, his Sons have been declared to be equal sharers ' *—(*Bṛhaspati* 25.12-13).

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property. . . . This rule pertains to cases where the partition is being made at the instance of rebellious Sons; in cases where the Father is making the partition of his own accord, the rule is that 'he shall divide his Sons according to his wish'—(*Rāghavānanda*).

The implication of this is that when the Grandfather's property is being divided, it must necessarily be divided equally among the Father and his Sons—(*Nandana*).

Of the ancestral property, if there has been something that had been long lost,—and which had not been recovered by others, either because they were incapable of doing it, or because they did not make an attempt to do it,—if some such property has been recovered by the Father at the expense of money and effort, it shall be entirely his *own*, and not *common*, property (p. 128).—The fact of its being his 'self-acquired property' has been declared as the reason for not sharing it with his Sons unless he wishes it;—this may be taken to indicate that the Grandfather's property, which is not the self-acquired property of the Father, may be partitioned among the Sons even when the Father is unwilling.—But all that this indicates is that, when going to partition the property,—that portion of the ancestral property which he has himself acquired, the Father shall *not* divide among the Sons, if he does not wish it, while the rest of it he shall divide, even though he does not wish it; it does not mean that the partition shall be made by the wish of the Sons—(*Dāyabhāga*, p. 32).

'*Paitṛkam*'—ancestral . . . . This he shall not share with his sons as it would be property acquired by himself. [*Vāchaspati* has taken this latter, not as a reason for the former assertion, but as a separate assertion regarding the regular *self-acquired property*]—(*Vivādaratnākara*, p. 461).

If the Father has recovered an ancestral property that had been taken away by strangers,—and this has been done without drawing upon any ancestral property,—that property shall not be partitioned without his consent; *similarly with the self-acquired property of the Father*. [This explanation agrees with the *Chintāmaṇi's*]—(*Dāyanirṇaya* 16.1.5).

This implies that the property of the Grandfather the Father must divide, if the Sons so desire, even though the Father himself may not desire it—(*Mitākṣarā*, pp. 649-650).

This implies that the partition of the Grandfather's property does not depend upon the Father's wish—(*Parāsharamādhava*, p. 339).

The particle '*iva*' has to be supplied after '*arjitam*'; or, it may be that the ancestral property thus recovered by the Father has become his self-acquired property; and this is a reason for the foregoing assertion—(*Vīramitrodaya*, p. 574).

Such ancestral property shall not be partitioned if the Father does not wish it; treating it as his self-acquired property; the construction being '*svayam arjitam iti kṛtvā na vibhajēt*'—(*Smṛtitattva* II, p. 165).

* '*Svashaktyā*'—by his own power; i.e. by the use of his own wealth and bodily exertion. The term 'Father' here stands for all persons acquiring self-acquired property. This same rule applies to ancestral property also,—with the exception of immovable property—to the same extent as the non-ancestral self-acquired property—(*Dāyabhāga*, p. 129).

'*Father's ownership*';—what is meant is that the Father is free to do what he likes. The effect of this freedom is set forth in the third line. Even without the consent of the Sons, the Father may make an unequal division. That ancestral property which is as good as *self-acquired*, as recovered by the Father himself,—in regard to this the Sons should not exert any pressure on the Father—(*Smṛtichandrikā*, p. 650).

The ownership of all this property rests with the Father, not with the Sons—(*Aparārka*, p. 728).

'*Hṛtam*', 'Lost'—i.e. taken away by others;—which the Grandfather himself failed to recover, but which was recovered by the Father;—also what the Father has acquired through his learning;—in the dividing and giving away of all this, the Father's wish is the sole determinant;—so also in regard to the property that has been acquired through valour or other means, without drawing upon the ancestral property;—similarly in regard to property recovered by the Father, without drawing upon the ancestral property,—the giving away and dividing and the rest is to be done by the wish of the Father only.

It is only in regard to property of this kind that there can be assigned a superior share to the eldest Son or a double share taken by the Father himself,—if the Father so wishes.

It is only in the case of the aforesaid property that there can be *unequal* shares as asserted in the following text by *Yājñavalkya* (2.114)—

[880] 'If the Father makes the division, he shall divide the Sons as he wishes; he may assign a superior share to the eldest, or all may have equal shares';—

as this has been called forth only in reference to such property in regard to which the Father's ownership is absolute.*

In regard to the 'equal distribution' asserted in this same text, the same authority says—

[881] 'If he makes the shares equal, those Wives also shall be made equal sharers to whom no *Strīdhana* has been given either by the Husband or the Father-in-law'—(*Yājñavalkya* 2.115).

In this connection, as what is asserted is in reference to the division of property made by the 'Father', the 'Wives' spoken of must be the Wives of that Father himself.—'*Equal sharers*'—what is meant is that these Wives are to be given such property as would make their property equal to those other Wives who have already received their *Strīdhana*. When the Father himself takes his whole self-acquired property and gives only a little of it to his Sons, then it is out of his own share that he should give to his Wives shares equal to that of the Sons. That is the reason why the text has laid down the separate gift to the Wives (out of the property) only 'when he makes equal shares'.†

Just as in regard to his own self-acquired property, so also in regard to that ancestral property which he has recovered by his own power,—the distribution is determined by the Father's wish—(*Vivādachandra* 19.2–5).

'*Svashaktya*'—'by his own power',—i.e. *without* the help of the ancestral property. In the lost ancestral property that has been recovered by the Father *with* the help of the ancestral property,—by reason of his being the *recoverer*, the Father receives *two* shares—(*Vīramitrodaya*, p. 574).

* For notes see under 876 above.

† If, even on the advent of old age, the Father should desire to make an equal division between himself and his Sons, then each of his Wives should receive a share equal to that of the Husband himself. This express declaration disposes of the objection that such division would be inconsistent with *Hārīta's* declaration to the effect that 'there can be no division between Husband and Wife'—(*Smṛtichandrikā*, p. 613).

In cases where the plan of equal division has been adopted, the Wives of the divider himself, as also the widowed Wives of his Son and Grandson, if any, should receive the same share as their respective Husbands;—such of those as may not have been given any *Strīdhana* either by their Husbands or by the Father-in-law himself;—or those who have not received any *Strīdhana*—should receive shares equal to what the *Strīdhana* should have been; and in accordance with a *Smṛti text*, the maximum of *Strīdhana* has been fixed at 2,000, even where the property of the family is very extensive. In cases where the property is not extensive, the Wives shall receive equal shares.—Others again have explained that the 'equal shares'

Says *Hārīta*—

[882] 'Or, dividing a small portion, he may retain the greater portion and live in the house. If he finds himself becoming poor, he may resume the property from the Sons.'

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here prescribed are for *childless Widows*, with a view to their obtaining a child by 'appointment'.—This, however, cannot be right; firstly, as there can be no 'appointment' in the present age; and secondly, because in cases where 'appointment' would be possible, the Widow's share would be determined by the law relating to such 'appointment'—(*Vishvarūpa*).

Such Wives of the divider as have received no *Strīdhana* either from the Husband or from the Father-in-law should be made equal sharers *with the Sons*; i.e. each such Wife should receive the same share that has been assigned to each of the Sons—(*Aparārka*).

This is a special rule regarding cases where the option of 'equal division' has been adopted. In a case where the Father assigns equal shares to all his Sons, he should assign to his Wives also shares equal to that of the Sons,—to those Wives to whom no *Strīdhana* has been given either by the Husband or by the Father-in-law. In cases where *Strīdhana* has been given, half-a-share shall be allotted to the Wife.—In cases where the Father divides the property on an *unequal* basis,—giving to the eldest Son a 'superior share' and so forth,—the Wives do not receive such 'superior shares'; what they receive is a share equal to the shares into which the residue of the property—after extracting the said 'superior share'—is divided; along with such articles as have been declared to be such as should be given to them; such, for instance, as 'Utensils and Ornaments', which have been declared by *Āpastamba* to belong exclusively to the Wife.—Even when 'Body-born' (Legitimate) Sons are there, if the Father is making a division during his lifetime, the Wives should be allotted shares equal to the Sons'. Similarly also when the property is divided after the Father's death; as has been declared in *Yājñavalkya* 2.123.—It is not right to take the present text to mean that 'all that the Wife shall receive should be what is sufficient for her subsistence'; as in that case, the terms 'equal' and 'share' would be absolutely meaningless.—It might be held that—'if the property is a large one, she shall receive what is enough for her subsistence, and if it is small, she shall receive a share equal to that of the Sons'.—But this would be repugnant to the injunctive character of the Injunction that 'the Wives shall be made equal sharers'—(*Mitākṣarā*).

If the Father makes the Sons equal sharers, then he should make his Wives also equal sharers. From this it follows that if he makes an unequal division among his Sons, the Wives also shall be made unequal sharers. This refers to the Wives of the Father himself, not to the Wives of the Son or the Grandson; because it is the Father who is the *divider*, and it is the *divider's* Wives that are meant.—If there are some Wives who have not received some property either from the Husband or the Father-in-law, then they are to receive just that amount of wealth.—According to *Halāyudha* childless Wives also are meant to be included here. In cases where *Strīdhana* has been already given, the Wife is to receive only half-a-share, says the *Prakāsha*—(*Vivādaratnākara*, pp. 464-465).

If the Father makes an equal division,—among his Wives there may be some who have received *Strīdhana* from the Husband or the Father-in-law, as also some who have got no *Strīdhana*; both these sets of Wives should be made 'possessed of equal wealth'.—If, however, the Father takes two shares for himself,—or, having divided a small portion of the property among his Sons, he takes for himself the larger portion,—then he should make his Wives 'equal sharers' out of what he has taken for himself—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

The term '*sama*' stands for such share as is neither more nor less; or it may stand for the proportion of 4, 3, 2 and 1 shares, which may be called '*sama*', i.e. *equitable*, in the sense of being sanctioned by the Scriptures.—Under these circumstances, if the Father, by his own wish, makes his Sons 'partakers of *sama* (equal or equitable) shares', then his Wives also should be made 'equal or equitable sharers'. For instance, if the Sons, born of his *Brāhmaṇa* Wife, all receive equal shares, then the *Brāhmaṇa Wives* also shall receive equal shares;—but if his Sons of *mixed castes* (born to him from *Kṣattriya*, *Vaishya* and *Shūdra* Wives) receive 3, 2 and 1 shares respectively, then their Mothers also should receive the same shares as their respective Sons.—This is an exception to what has been declared in *Yājñavalkya* under 2.114.—In case the Wives have received *Strīdhana*, in the form of Utensils and

'*Upadashyēta*'—Become poor.*
This also refers to the Father's self-acquired property.
Nārada—

[883] 'When dividing the property, the Father shall take two shares for himself.'†

Ornaments and the like, then they shall receive *half*; but 'half' here does not stand for 'equally divided part', it stands for 'share' in general; and the meaning is that in this case, the Wives shall receive just that amount which, along with their *Strīdhana*, would be equal to what has been received by their Sons,—the share of each such Wife thus being made 'equal' to that of her Son.—Against this the following objection may be raised—'This would mean that in an indirect manner, the *Strīdhana* is to become divided, and this would go against all those texts which declare *Strīdhana* to be *impartible*'.—But there is no force in this objection; as a matter of fact, in cases where we have texts laying down exceptions to the general maxim of the 'impartibility of *Strīdhana*', this general maxim has to be taken as qualified (and set aside) to that extent; and where there are no exceptions, the maxim remains intact. In the present case, when we take the two texts together —(*a*) 'She to whom no *Strīdhana* has been given shall receive an equal share', and (*b*) 'She to whom *Strīdhana* has been given shall receive half-a-share',—we find that by implication, they constitute an exception to the general rule of the Impartibility of *Strīdhana*.—In a case where the Father makes an *unequal* division, allotting a 'superior share' to the eldest Son and so forth—the Wives are not to receive any 'superior share'; what should be done is that, after the 'superior share' assigned to the Son or Sons has been extracted, the residue shall be divided equally among the Sons,—the Wives also receiving equal shares.—The present text,—as also the text that 'where the Sons are making the division after their Father's Death, the Mother also shall receive an equal share'—refers to such property ownership over which rests primarily with the Father; and such property is that which the Father has received as his share of the ancestral property and what he may have himself acquired by way of gifts and other sources—(*Madanapārijāta*, pp. 662–664).

If the Father makes the Sons 'equal sharers', then such of his Wives as have had no *Strīdhana* should also receive shares equal to those of the Sons. If they have received their *Strīdhana*, then they shall receive only half of the Sons' shares—(*Parāsharamādhava*, p. 333).

On the death of the Father, when the uterine Brothers are dividing the property, they should give to their Mother a share equal to that of her Son. But this shall be done only if the Mother has received no *Strīdhana*; if she has received it, then she shall have only half-a-share.—In case the division is being made by the Father himself, and he is allotting equal shares to the Sons, he should give to every one of his Wives a share equal to a Son's share—(*Dāyabhāga*, p. 67).

The Wives who have received no *Strīdhana* from the Husband or the Father in-law are mentioned here only by way of illustration; what is meant is that—'those who have got no *Strīdhana* at all *from any source*'; for such Wives, the share is restricted to one equal to the Son's share.—Thus then, even in a case where the Father makes an unequal division of his property by assigning the 'superior share' to the eldest Son,—the Wives are to receive a share equal to what the Sons receive out of the residue left after the extraction of the said 'superior share'; but the seniormost among them is not to receive a 'superior share'—(*Vīramitrodaya*, pp. 560-561).

The implication of this text is that the childless Wife is to receive a share at the time that the Father is making a division of the property among his Sons—(*Smṛtitattva* I, p. 179).

When the Father is making an equal division of his property among his Sons, the Wife also is to receive a share. If the Wife has got her *Strīdhana* she shall get a 'half-share', as declared by *Yājñavalkya* himself under 2.148; which means that she should get as much as would make her *Strīdhana* equal to the share of the Son. If her *Strīdhana* is larger than the Son's share, then she receives no share at all in the property divided—(*Vyavahāramayūkha*, p. 99).

* If his own share of the property should become exhausted—(*Vivādaratnākara*, p. 463).

† This refers to the Father's self-acquired property—(*Mitākṣarā*, p. 648; also *Madanapārijāta*, p. 647).

Shaṅkha-Likhita—

[884] 'In case he has a Son with superior qualifications, he shall take two shares for himself; also the best biped and the best quadruped, in addition. He shall give a Bull to the eldest, and the House to the youngest, with the exception of the Father's residence.'*

'*When dividing*'—this means that the Father is to receive two shares when he is making the division himself during his lifetime; but not if his Sons are making the division during his lifetime—(*Smṛtichandrikā*, p. 611).—[The possibility of the Sons making the division during the Father's lifetime is declared by *Viṣṇu*—'Even the Father's self-acquired property is sometimes divided by the Sons'.]

'*Ātmanaḥ*' is to be construed with '*pratipadyeta*', the meaning being 'shall take for himself',—and not with '*dravyam*', the meaning in which case would be 'his own property'; and this would be inconsistent with what has gone before—(*Dāyabhāga*, p. 44).

This unequal division pertains to other *Yugas*, not the present one—(*Parāsharamādhava*, p. 339).

This does not refer to the Father's self-acquired property, with regard to which he can always do what he likes; so that in that property, his portion cannot be limited to two shares; any such restriction would also be inconsistent with what has been said by *Hārīta* to the effect that 'the Father may take the greater portion for himself' (Text No. 882 above). For these reasons the present text must be taken as referring to the ancestral property—(*Smṛtitattva* II, p. 167).

This refers to cases where the Father has only one Son (see next Text, 884)—(*Vyavahāramayūkha*, p. 98).

This refers to the Father's self-acquired property—(*Vibhāgasāra*, 3.1–3).

* The Father is entitled to two shares only if he has only one Son, not otherwise —(*Vivādachandra* 20.1-2).

'*Rūpamadhikam*'—having taken one thing in excess, he shall take two shares.—*If he has many Sons*,—and if the eldest and the youngest are possessed of superior qualities,—a Bull should be given to the eldest and the House to the youngest. These special things are to go to these Sons even though the Father may be unwilling to give them. If such were not the meaning, then there would be no point in mentioning this specially.—This conclusion does not militate against the principle of equal division, laid down by *Yājñavalkya*; because this latter rule is meant for cases where all the Sons are possessed of equal qualifications.—The term '*ēkaputraḥ*', 'with an only Son', has been taken by *Halāyudha* to mean the *eldest Son*. The *Bhāṣyakāra*, on the other hand, does not read the term '*putra*' at all; and explains the text to mean that—'even though he be *ēkaḥ*, alone, without a Wife, he shall take two shares, and if he has a Wife, he shall satisfy her by assigning another share to her: from among bipeds and quadrupeds, he shall have one, in addition to the said two shares'; he proceeds to add that the additional things are to be assigned to the eldest and youngest Sons only if they happen to be endowed with superior qualities; and this even though the Father may be unwilling;—if there is no superiority in the quality of any Son, then the division may be equal or unequal, according to the Father's wish—(*Vivādaratnākara*, p. 466).

Shaṅkha-Likhita have declared here that the Father is to have two shares, only in the event of his having an only Son.—The author of the *Vyavahāra-pārijāta* has explained the text as follows:—The term '*ēka*' stands for *superior*, and the meaning is that, if the man has a Son who is *superior*, i.e. possessed of such qualifications as render him capable of acquiring property for himself,—then, when making a division between that Son and himself, the Father shall take two shares for himself.—*Jīmūtavāhana* (in *Dāyabhāga*, p. 48) has expounded the compound '*ēkaputraḥ*' as '*ēkasya putraḥ*', *the son of one Father*; i.e. the Body-born Son; whereby the *Kṣetraja Son* becomes excluded; and the meaning according to him is that, if the Father is the Body-born of his Father then in the property of this latter he may take two shares.—This, however, is not right; as under this explanation, the text would pertain to the *Grandfather's* property, to which the rights of the Father and Son are equal, and there would be no justification for the Father,—even though he was the Body-born Son of his Father,—to take *two* shares.—The author of the *Mitākṣarā* has entirely ignored this text of *Shaṅkha-Likhita*—(*Vīramitrodaya*, p. 566).

'*Ēkaputraḥ*'—the eldest Brother, competent to earn. If he is not so, then the Father's share shall be equal to the Son's.—If '*ēka*' meant the *number* 'one', then the next word would become disjointed—(*Vibhāgasāra* 3.1–5).

'*Rūpam*'—thing.

Thus the meaning is that the Father shall take (*a*) two shares, and (*b*) the best one among slaves, and (*c*) the best one among the cattle.—One Bull shall be given to the eldest Son if he is possessed of the best qualifications, and the House—with the exception of the Father's residence—is to be given to the youngest Son who may be possessed of superior qualifications.

This allocation of *two shares* to the Father must be taken as meant only for the case where the Father has an only Son; as it is simpler to take the two texts as having the same origin.

This rule applies to property which is *not* the Father's self-acquired; because in regard to his self-acquired property, he can divide it in any way he chooses, the mention of the 'only son' would be futile.

The term '*ēka*' here stands for *superior*, and does not connote the number *one*. Otherwise, it would be inconsistent with the mention of the 'eldest' and the 'youngest' (which would have no meaning if the *only son* were there). Hence what is meant is that in case the eldest and the youngest Sons are possessed of superior qualifications, they should receive the additional things, while the other Sons shall receive equal shares of the property; while the Father shall receive the *two shares* along with the additional things (best slave and best cattle). Such in brief is the import of the text.

Says *Āpastamba*—

[885] 'Having satisfied the eldest Son by the gift of a superior article, the Father shall divide the rest equally among his living Sons.'

The qualifying term '*jīvat*', 'living', indicates that no share is to be given to the Wife of a Son who may be dead; though it has to be given to his Son; firstly because of the declaration that 'the Son is the same as one's own self', and secondly because of another text which actually enjoins it.

The reading adopted in the *Ratnākara*, however, is '*jīvan*' (as a separate present participle, qualifying the 'Father'); that, however, is not right; as the fact of his being *alive* is clearly indicated by his being spoken as the 'maker of the division', which would make the qualifying term 'living' entirely superfluous.*

'*Ēkadhanēna*'—one superior article.

As to who is 'the eldest'—*Dēvala* says—

[886] 'Among Sons born of Wives belonging to castes different from that of the Father,—the Progeny, the Forefathers and Seniority rests upon that Son whose face they see first.'

That is, among Sons born of Wives belonging to castes other than that of the Father, that Son whose face one sees first,—on him rest the Progeny and the Forefathers, as also *Seniority*. Which means that the Father's first male child is the 'eldest'.—But if a Son is born, even subsequently, of a Wife

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* In regard to his self-acquired property, the Father is free to do what he likes, but the ancestral property cannot be divided at his mere will, as the Sons also have a share in it. Even so, the partition made by the Father should be accepted as valid—(*Vibhāgasāra* 3.1–5).

'*Jīvan*', 'Living', Father, who is incapable of having more Sons.—'*Ēkadhanēna*'—by the gift of a good house or some such thing. . . . . Whether the eldest shall receive more or less shall depend upon the excellence of his qualities—(*Vivādaratnākara*, p. 467).

The living Father shall satisfy the eldest Son by giving to him some excellent thing out of the joint property and the rest he shall divide equally among himself and the Sons, including the eldest. The special share is given by reason of his being the first born; and this share shall consist of only one good thing—(*Smṛtichandrikā*, p. 608).

belonging to the same caste as the Father, then this Son is the 'eldest', even though born later.

This has been thus declared by *Manu* (9.125)—

[887] 'Among Sons born of Mothers of the same status,—if there is no other distinction,—there is no *seniority* on account of their mothers; *seniority* is to be declared by birth only.'*

That is, in a case where the Father has Sons from Wives belonging to several castes,—the Son of the Wife who is of the same caste as her Husband is the 'senior', even though he might have been born later.

Again—

[888] 'If an eldest Brother, through avarice, defrauds the younger Brothers, he shall lose his *seniority* and also his share and shall be punished by the King'—(*Manu* 9.213).†

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* '*Of the same status*'—i.e. belonging to the same caste—(*Medhātithi*).

Among Sons born of Mothers of the same caste, as there is no distinction based upon the difference in caste, it has been held that *seniority* is not due to the order of the Wives; only one who is senior *in age* is to receive the Preferential Share.—Thus, inasmuch as 'Seniority on account of Mothers' is found to be both affirmed (in *Manu* 9.124) and denied (in the present text), this has to be taken as a case of option; the option being determined in each case by the presence or absence of superior qualifications; i.e. one possessed of superior qualifications is to be regarded as the 'Senior'. It is for this reason that the Preferential Share has been declared by *Bṛhaspati* to be given to the 'eldest' only if he is possessed of superior qualifications, in regard to Birth, Learning and other qualities—(*Kullūka*).

In Texts 122, 123 and 124, *Manu* has propounded the views of other people regarding partition; with this text he proceeds to set forth his own views; and to that end, he explains what he means by 'eldest'. Among Sons born of Mothers of the same caste, the *seniority* qualifying for the Preferential Share depends upon *priority of birth*, not upon the sequence in the marriage of their Mothers.—*Kullūka* has called this a case of *option*; while *Medhātithi* regards it as a mere 'commendatory declaration'. As a matter of fact however, Priority of Birth is the determining factor—(*Rāghavānanda*).

Some people have held the view that 'Verses 122–124 of *Manu* have stated the *Pūrvapakṣa* view and the present verse states the *Siddhānta* view; otherwise there would be an inconsistency between the two'.—This however is not right; because it has been already explained that the diversity in the division is due to differences in the qualification and character of the Sons. This is also the correct explanation; for, so long as a text can be interpreted as stating the author's own view, it cannot be right to take it as representing the contrary (*Pūrvapakṣa*) view. Further, *Lakṣmīdhara* and also the *Pārijāta* have decided that the Preferential Share for the *younger Son* born of the *senior Wife* is due to him by reason of his being the '*eldest*', i.e. seniormost—(*Vivādaratnākara*, pp. 476-477).

'*Jyēṣṭhatā*', 'Being eldest', 'seniority' consists not only in being *born first*; as it has been declared that 'Seniority is due to *qualifications and age*'—(*Vivādachandra* 19.2–7).

'Seniority' among Brothers rests upon the seniority of the Mother,—and when there are several Sons born of Mothers of the same caste, 'seniority' goes by age —(*Dāyanirṇaya* 19.2–6).

† '*Defrauds*'—i.e. cheats them out of their share in the property; as also of the rewards and honours that may be conferred by the King on the family.—'*Loses his seniority*'—i.e. is to be treated as an ordinary 'kinsman' (and not obeyed and respected like the Father). This, however, does not preclude *all* that is due to him as the eldest Brother.—He loses also his 'share'—i.e. the Preferential Share due to him as the eldest Brother.—'*Punished*';—as no special form of punishment has been prescribed, the man shall be reprimanded or censured or fined, in accordance with the exact nature of his offence—(*Medhātithi*).

'*Defrauds*'—i.e. tries either to deprive them of their share or to reduce it.—'*Loses his seniority*',—i.e. is not to be respected. As the text expressly names the 'eldest' Brother,—it follows that, if the younger Brothers behave in a similar manner, they are *not* to lose their share—(*Sarvajñanārāyaṇa*).

Manu (9.112)—

[889] 'For the eldest, the Preferential Share shall consist of the twentieth part (of the property), as also the best among the chattels belonging to the Father; half of that for the middlemost, and the fourth for the youngest.'*

He becomes deprived of the honour due to him, as also of the Preferential Share—(*Kullūka*).

'*Vīnikurvīta*'—turn out of the House.—'*Ajyēṣṭhaḥ*'—deprived of the honour due to him;—'*abhāgaḥ*'—not entitled to share the paternal property—(*Rāghavānanda*).

The text lays down the circumstances under which the eldest Brother becomes deprived of his share.—'*Vīnikurvīta*'—set aside—(*Nandana*).

If the eldest Brother *oppresses* the younger ones, he ceases to be entitled to respect and to the Preferential Share—(*Rāmachandra*).

In this text *Manu* has been understood to make the misappropriation of joint property an offence only for the eldest Brother, not for the younger ones. But this is not right; because just as it is an offence for the eldest Brother, who is in the place of the Father, so it is also for the younger ones, who are in the position of Sons. This has been made clear by *Gautama* quoting the *Aitareya Brāhmaṇa* 2.1-7—'If a man deprives a co-sharer of his share, he becomes destroyed'; where the offence is not restricted to the eldest Brother—(*Mitākṣarā*, p. 672).

'*Vīnikurvīta*'—defrauds.—'*Ajyēṣṭhaḥ*'—no longer to be respected as the eldest Brother—(*Vivādaratnākara*, p. 478).

When it is wrong for the eldest Brother, who is his own master, to misappropriate joint property, it is very much more so for the younger Brothers who are dependent upon the eldest Brother; it cannot mean that such misappropriation is wrong for the eldest Brother only—(*Parāsharamādhava*, pp. 383-384; also *Vīramitrodaya*, p. 706).

The term 'Eldest Brother' stands here for coparceners in general; the meaning being that such misappropriation is wrong for the eldest, and much more so for the younger ones among them—(*Vyavahāramayūkha*, p. 131).

* Some people have held the view that the rules sanctioning the Preferential Shares are not meant for the present age; that they stand on the same footing as the rule sanctioning the killing of cows for the *Madhuparka offering*.—This, however, is not right; no such restriction regarding the time of application is found anywhere.—'*The twentieth part*'—of the entire estate—shall be extracted and given to the eldest Brother as his Preferential Share; '*half of that*'—i.e. the *fortieth* part,—to the middlemost Brother; and the '*fourth*'—i.e. the *eightieth* part—to the youngest Brother.—After all these Preferential Shares have been extracted, the remainder shall be divided into three equal shares.—Further, among all the chattels, that which happens to be the best, is also to be given to the eldest Brother.—If we adopt the reading '*dravyēshvapi param varam*' in place of '*sarvadravyāchcha yad varam*', the meaning would be that 'among all kinds of things, the best of each kind shall be given'; for instance, if there are cows and horses, the best cow and the best horse shall be given to him absolutely as a Preferential Share, not in lieu of another article, or in return for a price.—This rule sanctioning the Preferential Shares is meant only for those cases where all the three Brothers are possessed of special qualifications—(*Medhātithi*).

Out of the joint property, the twentieth, the fortieth and the eightieth parts being extracted, the twentieth part and one good article shall be given to the eldest Brother and the other two parts to the two younger Brothers, and then the remainder shall be divided equally among them. This shall be done if all the three Brothers are possessed of equally high qualifications—(*Sarvajñanārāyaṇa*; also *Kullūka*).

The meaning is that when the property is being divided, the eldest Brother, if he is worthy, shall receive the best share—(*Rāghavānanda*).

If there are several *middle* Brothers, each of them shall receive what has been laid down for the 'middlemost'—(*Nandana*).

Manu here lays down the allotment of Preferential Shares. To the eldest Brother, who is also the best equipped with learning and other qualities, shall be given the *twentieth* part of the whole partible property, and also the best thing among the articles constituting that property,—as his Preferential Share;—half of this, i.e. the *fortieth* part of the same property, as also a middling thing, shall be given to the middlemost in age, who is also possessed of middling learning and other qualities;—the fourth part of it,—i.e. the *eightieth* part of that same property, and

Again—

[890] 'From among the goods of all kinds, the eldest shall take the best; as also anything that may be particularly good, and also the best of ten (animals)'—(*Manu* 9.114).*

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also some little thing, shall be given to the youngest in age, who is also possessed of the lowest qualifications—(*Smṛtichandrikā*, p. 619).

All these unequal divisions depend upon the wish of the person making the division—(*Aparārka*, p. 717).

Of the entire estate, the *twentieth* part, as also the best of all the chattels, shall be given to the eldest; half of that—i.e. the *fortieth* part of the property—and a middling thing, shall be given to the middlemost, and the fourth of that—i.e. the *eightieth* part of the property and some inferior article, shall be given to the youngest. This is the mode of Preferential Partition made after the death of the Parents [*Mitākṣarā*, p. 621].—All these Preferential Shares are to be awarded by the neutral persons who are making the partition—says *Bālambhaṭṭī*.

The Preferential Shares here laid down are for those cases where the eldest and others are possessed of special qualifications. The rule on this point is as follows:—When there are several Sons born of the same Mother, and all possessed of good qualifications,—but there is a gradual decrease in the degree of these qualifications,—then, out of the joint property, the twentieth part shall be extracted and given to the eldest Brother, along with the best thing among the chattels; the fortieth part along with a middling thing to the middlemost Brother, and the eightieth part along with an inferior thing to the youngest Brother—(*Vivādaratnākara*, p. 469).

This rule applies to cases where the property is more than 'ten', and when there is a difference in the qualifications of the Brothers—(*Vivādachandra* 20.2.2).

The meaning of this is as follows:—Out of the partible property, the twentieth part, and also the best among the partible articles, are to be given to the eldest Brother; the fortieth part of the joint property and a middling article to the middlemost and the eightieth part and an inferior article to the youngest; the remainder of the property is to be divided equally among all.—There are several other texts sanctioning such unequal divisions; but, though sanctioned, as the practice is not followed among people, it should not be adopted in practice; this case being analogous to the case of *Niyoga* which, though sanctioned by the Scriptures, is not adopted in practice at the present time—(*Madanapārijāta*, p. 646).

This text lays down the method of Preferential Shares.—Such unequal division by the Father is permissible only in connection with his self-acquired property; in the ancestral property, all have equal shares, and it is absolutely wrong to have an unequal division merely by the Father's whim (*Parāsharamādhava*, pp. 332-333).

* The first sentence only reiterates what has been said before regarding the eldest Brother taking 'the best of the chattels'.—The term '*jāta*' may mean *kind* or *variety*.—'*Anything particularly good*'—such as a piece of Cloth or an Ornament.—'*Best of ten animals*'—if there are *ten* horses, or ten cows, he shall take the best of these.—Some people read '*varān*' for '*varam*', and take it as qualifying '*dashataḥ*' which is construed as Accusative Plural, the meaning being that 'he shall take *ten good animals*'—(*Medhātithi*).

When the property has been divided into the requisite number of shares, any article which is the best, and which the eldest Brother likes best, should be taken by him; similarly among all the shares, what may happen to be particularly good shall be taken by the eldest; and out of every ten animals to be partitioned, that which is the best shall also be taken by him, in addition to what may have been included under his own share.—This applies to cases where the eldest Brother possesses very high qualifications and the younger ones very low qualifications—(*Sarvajñanārāyana*).

From among the goods of all kinds, the eldest Brother shall take what may be the best; this reiterates what has been said before.—If there is any single thing that is particularly good, that also will go to the eldest; as also the best one among every ten animals.—This applies to cases where the eldest Brother possesses high qualifications and the younger ones possess none—(*Kullūka*).

'*Sarvēṣām*'—from among all the things to be divided.—'*Dashataḥ*'—from among ten *cows* or other animals.—This refers to cases where there are ten animals—(*Rāghavānanda*).

Baudhāyana—

[891] 'The eldest Brother shall take one out of ten; the others shall receive equally.'

[892] 'All the Sons are to receive their Father's property equally. Any one of them who is endowed with Learning and Righteousness deserves to receive more'—(*Bṛhaspati*).

All this applies to cases where the eldest Brother is possessed of very superior qualifications; while the *Twentieth Part* is to be given to him as a Preferential Share when he possesses just *some* special qualifications; in cases where all the Brothers possess *equal* qualifications, the eldest Brother shall get only some little thing as a present to satisfy him.*

Dēvala—

[893] 'To the eldest,—if he is righteous,—the tenth part shall be allotted.'

This is meant for cases where the eldest Brother is specially devoted to Vedic Study and Fire-tending, and the others are all entirely devoid of qualifications; so say *Halāyudha* and *Pārijāta*.†

Bṛhaspati—

[894] 'Where the Father has made the division—either in equal or unequal shares,—that division shall be maintained (by the Sons); otherwise they would become degraded.' ‡

The Preferential Shares mentioned in the previous texts refer to cases where the qualifications of all the Brothers are of a high order; the present text lays down what is to be done in cases where the eldest Brother is possessed of distinctly higher qualifications.—'*All kinds of goods*'—such as Cattle, Land, Gold and so forth;—'*the best*'—the eldest shall take.—If there is anything '*particularly good*', which cannot be divided,—such e.g. as the image of a deity,—that also the eldest shall take. He shall also receive the best one from among every ten animals—(*Nandana*).

If the eldest Brother is possessed of very superior qualifications, then—(*a*) that which is the best article among all the goods, (*b*) that which may be the best among its kind,—e.g. the best of Rubies,—and (*c*) the best of every ten animals,—cows, buffaloes, etc.,—the eldest shall receive—(*Vivādaratnākara*, p. 469).

* The meaning is that the Sons are equal sharers in the property as well as the debts of the Father .... If the Sons of a Father are not outcasts, or under other disabilities,—and they are all equal in the matter of Learning and other qualifications,—they shall share the property equally;—but in case there is inequality among them, one who happens to be endowed with superior learning and other qualifications shall 'receive more', either through a 'Preferential Share' or through 'unequal division'—(*Smṛtichandrikā*, pp. 616 and 618).

Excessive shares shall be given to the eldest or other Brothers only when they are possessed of superior qualifications—(*Vivādachandra* 20.2.2).

Here *Bṛhaspati* points out in what cases the ordinary rule of equal division may be deviated from—(*Smṛtitattva* II, p. 164).

† According to *Halāyudha* and *Pārijāta*, this is to be given where the eldest is equipped with Vedic Scholarship and the others have no special qualifications;—according to others, the meaning is that when the eldest is equipped with the Fire, and with Vedic Scholarship, and the others have no special qualifications, then the eldest receives the 'tenth part' and among the other unqualified Brothers the 'fortieth part' of the property is to be divided—(*Vivādaratnākara*, p. 472).

‡ What is meant to be precluded by this is the possibility of the partition being effected by the wish of the Sons—(*Aparārka*, p. 717).

'*By the Father*',—i.e. in the manner prescribed in the Scriptures. What would not be in accordance with the Scriptures would not be lawful and hence not irrevocable. Even in regard to one's self-acquired property, it would not be a lawful division if one Son received a thousand gold-pieces and the other only a shell. Hence there can be no doubt that in case the unequal division has been made in an unauthorised manner,—and if the Sons object to it,—it cannot be maintained—(*Smṛtichandrikā*, p. 610).

This is in regard to the self-acquired property of the Father.

Manu (9.215)—

[895] 'Among undivided Brothers, if there is a Joint Concern,—the Father shall, on no account, make an unequal division of it.' *

This refers to the case of such property as has been acquired by the joint labour of the Brothers; hence there is no inconsistency between this and what has gone above.

Bṛhaspati—

[896] 'One who is *seniormost*, in regard to Birth, Learning and other qualifications, should receive two shares out of the inheritance; the others should be equal sharers; the former is like a Father unto these.'†

What is meant is that in regard to his self-acquired property, the Father is entirely free to take two shares for himself, or to give something to the Sons and take all the rest for himself, or to make an unequal division among the Sons—(*Vivādachandra* 19.2–10).

* It has been declared by *Yājñavalkya* (2.116) that 'an unequal division has been declared to be lawful, if made by the Father'. This is what is desired here.—'*Joint Concern*'—i.e. where all of them have acquired wealth—one by agriculture, another by receiving gifts, another by service, while another takes care of what has been earned by others and invests it and uses it to the advantage of all;—all such wealth shall be pooled together and divided equally, and no excessive share shall be given to any one by the Father, through his love for him—(*Medhātithi*).

'*Joint Concern*'—acquiring wealth jointly—by agriculture and other diverse methods.—The Father shall not give more to any one on the ground of his having put forth more work than the others—(*Sarvajñanārāyaṇa*).

If among the Brothers living together with their Father, there is some Concern carried on for the purpose of acquiring wealth,—then, at the time of the division of that wealth, the Father shall not on any account give more to any one Son than to the others—(*Kullūka*).

This is an exception to what *Yājñavalkya* has said in regard to the legality of unequal division made by the Father—(*Rāghavānanda*).

'*Saha utthānam*'—joint acquisition.—'*Viṣamam*', '*unequal*',—by allowing a larger share to the eldest Son—(*Nandana*).

In cases where property has been acquired by the joint labour of all the Brothers, the division shall be equal,—even when done by the Father. The implication of this is that in other cases an unequal division may be made by the Father—(*Aparārka*).

'*Utthāna*'—Action tending to the acquisition of wealth—(*Vivādaratnākara*, p. 468).

'*Utthāna*' is *acquisition*.—If all the Brothers have had an equal share in the work of acquiring the wealth, there shall be no unequal division—(*Vivādachandra* 19.2–8).

What is meant here is that, if the Sons themselves ask for partition, during the Father's lifetime,—then the Father shall not give a Preferential Share to any one—(*Dāyabhāga*, p. 57).

If there has been an equal '*utthāna*'—i.e. exertion, on the part of all the Brothers, towards the acquiring of the wealth,—then the Father shall not make an unequal division—(*Vīramitrodaya*, p. 562).

What *Manu* declares here is that there shall be no unequal division if the Sons themselves ask for partition—(*Smṛtitattva* II, p. 165).

'*Utthāna*'—earning, acquisition.—There shall be no unequal division, as it has been prohibited. So that, in this case, the Father shall not receive two shares, nor shall the eldest Brother receive a Preferential Share—(*Vibhāgasāra* 3.2-3).

This refers to the case where the Sons have asked for partition—(*Dāyanirṇaya* 16.2–1).

† This text lends support to the view that the 'seniority' does not mean *older age* only, but also superiority in Learning and other qualifications—(*Smṛtichandrikā*, p. 620; also *Vivādachandra* 20.2–4).

This refers to that eldest Brother who is possessed of the highest qualifications and is competent to support the others, like a Father.

Again—

[897] 'All the Sons are to receive their Father's property equally. Any one of them who is endowed with Learning and Righteousness deserves to receive more'—(*Bṛhaspati*). [*This is the same as Text* 892 *above.*]

Vyāsa—

[898] 'If any one of the Brothers, while depending upon the joint property, acquires, through valour and such other means, any such property as conveyances and the like, the Brothers shall share that property; two shares out of it shall go to the acquirer and the remainder shall be divided equally among the rest.'*

Herein *Bṛhaspati* explains to what sort of 'eldest Brother' excessive shares are to be given—(*Vivādaratnākara*, p. 480).

The eldest Brother is entitled to two shares, not only by virtue of his being seniormost in *age*.—The title to 'two shares' cannot be regarded as referring to such property as the eldest Brother might have acquired for himself; as, in that case, there would be no point in the mention of 'Learning and other qualifications'.—This rule regarding the 'two shares' applies to only those cases where the division is among *uterine* Brothers; when the division is among *uterine and non-uterine* Brothers, the 'eldest' is to receive only the 'twentieth part' as his Preferential Share—(*Dāyabhāga*, p. 42).

* '*Joint property*'—Property belonging to those not separated.—The term '*Brothers*' stands here for *coparceners in general*.—'*Through valour and such other means*'.—This indicates the partibility of all those other kinds of property which a coparcener may obtain in marriage and so forth, on the basis of the joint property—(*Smṛtichandrikā*, p. 640).

This should be taken as applying to all those kinds of property obtained by Learning, Bravery and the like, which do not fall within those specifically declared to be *impartible*—(*Vivādaratnākara*, p. 508).

The acquirer worked through his body as also through the joint property, while the other co-sharers worked through the property only; hence it is only equitable that the former should have a double share—(*Dāyanirṇaya* 14.2-3).

This refers to cases where the additional property has been acquired with the help of the ancestral property—(*Aparārka*, p. 725).

Just as in the case of the property acquired by Learning,—through the help of the property of the Father and others,—so also in that of property acquired by Bravery, etc.,—the acquirer is entitled to two shares—(*Parāsharamādhava*, p. 379).

The mere fact of the property being acquired by Bravery, etc. does not make it impartible; under certain circumstances, even such property is partible; e.g. this text speaks of such property when acquired with the help of the joint property—(p. 107).—The text lays down a *double share* for the earner of the property in what he may have acquired with the help of the joint property; while in a case where such property has been acquired entirely with efforts of his own body and with the help of his own private property—without drawing upon the joint property,—he receives, not only *two shares*, but much more; in fact, the whole of it goes to him—(*Dāyabhāga*, p. 111).

'*Sādhāraṇam*'—Joint property.—This provides an exception to the general rule that the gains of bravery, etc. are not partible—(*Madanapārijāta*, p. 688).

'*Brothers*'—This term stands for all members of the joint family, Uncle and the rest. If, in the earning, some loss has been suffered by the joint property, the share received by the coparceners in the newly acquired property shall be increased in proportion to his share in the said loss. Such is the view of the *Dāyabhāga*—(*Smṛtitattva* II, p. 176).

One who has earned more with the help of the joint property shall receive a double share (4.1-2).—This refers to cases where the additional property has been acquired with the help of the joint property.—'*Shauryādi*' stands for 'that of which Valour is the first'; so that Learning also becomes included; and in all 'gains of Learning', as defined by *Kātyāyana*, the acquirer receives a double share—(*Vibhāgasara* 9.2-1).

That is, even when any one acquires, by his own special personal effort, through bravery and such means, any property,—with the help of the joint property,—the acquirer is entitled to two shares in that property. [*This text is quoted and commented upon again on p.* 214 *of the printed text, vide Text No.* 953 *below.*]

Vashiṣṭha—

[899] 'Among these, if any one has acquired something by himself, he should receive two shares in it.'*

This means the same as the previous text. [*This text is quoted again and commented upon, vide Text No.* 952.]

Yājñavalkya (2.120)—

[900] '(A) In what accrues to the joint property, the division shall be equal.—(B) Among persons born of several Fathers, the shares are determined through their respective Fathers.'

(A) '*Sāmānya, etc. etc.*'—That is, even when a co-sharer in the joint property adds to that property, through Agriculture, Trade and other means,—he shall not receive a larger share.—This, however, is to be understood to refer to cases where the other coparceners also have done the same (towards the augmentation of the joint property); otherwise there would be inconsistency with the rest of the text.—(B) '*Anēka, etc. etc.*'—That is, in a case where there have been several undivided Brothers and they have all died, each of them leaving several Sons,—and each of these Sons adds to the joint property by means of Agriculture and other means,—each of these Sons will not have a full share, like their Fathers; all the Sons of one Father will jointly receive only what would have been the share of their common Father.†

If a coparcener by his own efforts, but with the help of the joint property, acquires some property, he shall take two shares out of it for himself and divide the rest equally among the other coparceners—(*Vivādachandra* 20.2-3).

* '*Among these*',—i.e. among the Father, Brother and other coparceners—(*Madanapārijāta*, p. 647).

If among the Brothers living together, any one has acquired property by his own efforts, but by drawing upon the paternal property, that property is to be divided among all the Brothers, but the person who has acquired it shall receive two shares—(*Mitākṣarā*, p. 652).

† (A) '*Arthasamutthāna*'—acquiring of property. When a property is acquired by all coparceners with each other's help, it should be divided equally. Of such property, the division shall be equal, even when done by the Father.—(B) Several Brothers, who had lived together with their property undivided, have died; among them one has left a single Son, another has left two, and the third has left several Sons; in this case, the shares that will be assigned to these Sons will be through their respective Fathers; that is, the two or several sons of one Father shall share among themselves only that much of the property which would have fallen to the share of their Father; and the whole property shall not be divided equally among the Cousins—(*Aparārka*).

(A) '*Sāmānyārthasamutthānē*'—this qualifies '*dravyē*'; the meaning being, 'in the case of such property as has its rise from the joint property'; i.e. what has been derived from the common property,—the division shall be equal; even though some individual coparcener may have put forth much bodily labour and other kinds of effort in the obtaining of that property. But this is so only in the case of Brothers, not of all kinds of coparceners.—(B) There is equal division of the Inheritance only among Brothers;—'*Anēkapitṛkāṇām*',—among Cousins and other coparceners,—the division proceeds on the basis of their respective Fathers. That is to say, the Brothers having made an equal division among themselves,—when their Sons, in their turn, come to make a division, the Sons of each of the said Brothers shall divide among themselves only that which forms the share of their Father. The sense is that the Grandsons are entitled to the Grandfather's property only through their Fathers, not by themselves, like their Fathers—(*Vishvarūpa*).

Nārada—

[901] 'If a Brother, engaging himself in the business of the family, carries on their business, he should be enriched by the Brothers by the presenting of Food, Clothes and Conveyances.'

(A) This is an exception to the law relating to the 'gains of learning' and such other properties out of which the acquirer receives two shares. If the common property of undivided Brothers is augmented, through Trade, Agriculture and other means, by any one of the coparceners, the division of it shall be equal, and the acquirer shall *not* receive two shares.—(B) This lays down the rule for the division of the Grandfather's property among Grandsons. Though it is true that in their Grandfather's property, the Grandsons derive their right from their birth,—just like their Fathers—yet the division of that property among them shall be through their Fathers, and not through themselves. ['*Anēkapitṛkāṇām*' means those who have several *Fathers* but the same *Grandfather*—says *Bālambhaṭṭī*.]—The meaning is as follows:—In a case where a number of Brothers who had been living together have died, leaving Sons,—and there is divergence in the number of Sons left by them, one having left *two*, another *three* and so forth,—the two Sons of one Brother shall, between themselves, receive the single share that would have been their Father's; and the four Sons of the other Brother shall receive, among themselves, the single share that would have been their Father's.—The same rule applies also to the case when some Sons of the Grandfather are alive, while others have died leaving their Sons; the living 'Sons' receiving their own respective shares, and the Sons of the dead 'Sons' receiving what would have been their Fathers' share—(*Mitākṣarā*).

When all the Brothers have acquired property jointly by such means as Agriculture, Trade and the like, the division shall be equal among all of them. The particle '*tu*' serves to differentiate this case from that of the property that may have been acquired by a Brother independently of the joint (ancestral) property, which latter is not partible.—(B) This lays down the rule for dividing the Grandfather's property.—In a case where among the two Sons of the Grandfather, one has left one Son and the other four Sons,—the property shall be divided into *two* parts; one part shall go to the single Son of the first Son, and the second part shall go to all the four Sons of the second Son.—The particle '*tu*' indicates that the number of shares into which the whole property shall be divided shall not be the same as the number of the *Grandsons*—(*Vīramitrodaya-Ṭikā* on *Yājñavalkya*).

(A) This refers to cases where the property has been acquired by means other than *Learning*,—such as Agriculture and the like.—(B) In a case where Brothers, living jointly with their Father, have died leaving Sons,—the first Brother leaving *two*, the second *three*, and the third *four*,—though these Grandsons have a right in their Grandfather's property by virtue of their birth, equally with their Fathers, yet the two Sons of the first get only one part, the three Sons of the second get only one part and the four sons of the third also get only one part of the property—(*Parāsharamādhava*, pp. 378 and 337).

(A) If the joint property has been augmented by means of Agriculture, etc., the addition shall be divided equally among all; and the individual acquirer shall not have two shares.—(B) '*Anēkapitṛka*' are Cousins, the Sons of several Brothers, born of their Wives;—to these, shares in the Grandfather's property shall be assigned in accordance with the shares of their respective Fathers. That is to say, for example, there were three Brothers; one of them has one Son, the second has two, and the third has three; thus there are six *Cousins*; when these come to divide their Grandfather's property among themselves, they shall divide it,—not into *six* equal parts, but—into three equal parts as among the three Brothers (their Fathers); and the only Son of the first Brother shall take the whole of one such share; the two Sons of the second Brother shall receive, between themselves, the second of those three shares; and the three Sons of the third Brother shall receive, among themselves, the third share.—In those cases where some of the Brothers have died leaving their Sons, while some are living, the division shall be on the same lines,—each of the Brothers receiving a full share and their nephews receiving only what would have been their Fathers' share—(*Madanapārijāta*, pp. 688, 659-660).

(A) '*Samutthāna*' is *increase, augmentation*. The meaning is that the acquirer does not do anything more than the others. This refers to cases where the acquisition has been equal.—(B) The meaning of the second line is that, where there have been several undivided Brothers and they have died, leaving different numbers of Sons

That is, in a case where one of the coparceners takes up the work of the entire family and with his management augments the joint property,—what he receives as his *share* is the same as that received by other co-sharers; hence, in order to compensate him for his labours, the others should make special presents to him of Grains, Clothes, Horse, etc., commensurate with his work.*

Manu (9.207)—

[902] 'Among Brothers, if any one, being competent through his own profession, does not desire the joint property, he shall be debarred from his share, after a little has been given to him by way of maintenance.'

If a Brother 'through his own profession',—i.e. by his own effort,—is 'competent',—i.e. capable of making a living—should not take his share in the joint property, but relinquish it,—it should be made up for him by the other co-sharers, through portions taken from their own respective shares.—This is the meaning of this text, as also of the preceding text of *Nārada*,—says *Halāyudha*.

The Author of the *Prakāsha*, however, has explained the meaning of this text of *Manu* to be as follows:—When several coparceners are engaged in carrying on business for acquiring wealth, if some one among them, through laziness and other causes, does not do any work, he shall be debarred from the profit accruing from that business; he shall receive his share of the capital only.†

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each,—and each one of them has acquired property,—they will receive only the shares of their respective Fathers—(*Vibhāgasāra* 4.1–4; 4.1–6).

In cases where the dead has left only Grandsons and no Sons, the shares assigned to the Grandsons shall be in accordance with their respective Fathers—(*Vivādachandra* 20.1–6).

(A) This is an exception to what has been declared by *Vashiṣṭha* to the effect that the coparcener who has acquired a property by his own effort shall take two shares out of it. The meaning of the present text is that in a case where the accretion to the joint property has been brought about by agricultural and other operations, the division shall be equal and the acquirer shall *not* receive two shares. The text of *Vashiṣṭha* (Text No. 899) has, therefore, to be explained as pertaining to cases other than those referred to here—(p. 481).—(B) Among the Sons of several Brothers, if the number of these Sons is equal or unequal,—when the Grandfather's property comes to be divided, the Sons of one Brother shall receive that same share which would have been their Father's and each of the Sons shall *not* have a share allotted to him (*Vivādaratnākara*, p. 481).

(B) This text implies that the assignment of shares depends upon the relative proximity by birth, to the acquirer of the property—(*Smṛtitattva* II, p. 198).

(B) In a case where one Brother has left one Son, another has left two Sons, and the third, three Sons,—the number of parts into which the property shall be divided by these Sons shall be that of their Fathers, not that of their own—(*Vyavahāramayūkha*, pp. 100-101).

* In accordance with the maxim 'More work, greater reward', the Brother spoken of should have his share added to by his Brothers, by presenting additional grains and other things—(*Smṛtichandrikā*, pp. 617-618).

The meaning is that he should receive something—(4.1–3).—If one of the Brothers is engaged in the maintaining of the family, his part of the business shall be looked after by the other coparceners who will supply him with food and other things, according to his share in the property—(*Vibhāgasāra* 4.1–7).

† When several Brothers are living together, and jointly manage their ancestral property by cultivation and other means, if any one of them does not help in the management,—it is the debarring of such a Brother that has been declared here.—'*He shall be debarred from his share*',—i.e. in the net profits of the estate. . . . He, however, is not to be debarred from the main ancestral estate; nor will the profits also be entirely withheld from him; a part of his share of the profits shall be taken by the Brothers as a recompense for their labour, and the remainder shall be given to him '*by way of maintenance*'.—Or '*nirvibhājyaḥ*' may mean *shall be separated*, not allowed to live jointly—(*Medhātithi*).

Kātyāyana—

[903] 'If one's own unseparated (Brother) has died, one should make his Son the recipient of the share of that Brother,—which Son may not have got his subsistence from his Grandfather. He shall receive his Father's share from his Uncle or Uncle's Son. This same would be the equitable share of all his Brothers. The Son of that Son shall receive the said share; after that, it shall lapse.'

'*Nijē*', 'one's own',—Brother.—'*Tatsutam*',—i.e. the Son of the said Brother.—'*Jīvanam*', '*subsistence*',—i.e. share in the property.

What sort of share the Son shall receive is declared by the words '*pitryan amsham*',—'his Father's share'.

'*Tatsutaḥ*', 'the Son of that Son',—i.e. the Great-grandson of the ancestor whose property is being divided. Thus the property of a householder has to be divided into as many parts as there may be his Sons; and the share of any one of these shall be received by his Sons or Grandsons.—'*Lapse*'—i.e. it shall not go to his Great-grandson.

This refers to a case where they are all living together (as a joint family).

Thus the Wife of the dead Brother cannot receive a share, as she has not been mentioned here.*

'Among Brothers'—if any one does not want his share in the Father's property,—to him shall be given some small property by way of maintenance, and he shall be debarred by his Brothers from the property—(*Sarvajñanārāyaṇa*).

If a Brother is able to earn wealth by serving the King and other means, and does not want a share in the joint property,—he shall be given something out of it, by way of maintenance, and separated. If this is done, then the Sons of the debarred Brother would not be able to assert their claims over the property—(*Kullūka*).

If a Brother is able to maintain himself by other means, and does not want his share in the property,—to him something shall be given and the property divided among other Brothers. The giving of something is for the purpose of setting aside the claims of his Sons and other descendants—(*Rāghavānanda*).

'*Nirvibhājyaḥ*'—Debarred from sharing.

If a Brother who is entitled to a share in the property, being free from greed, does not accept any share in the property from his Brothers, he should be '*nirbhājya*' from his share; i.e. some little thing shall be given to him by way of maintenance and he shall be *separated*;—if he is quite competent, with what he has acquired by his own efforts—(*Rāmachandra*).

'*Svakāt amshāt*',—i.e. from his share in what the other Brothers have acquired by their efforts—(*Aparārka*).

If a Brother, who is able to earn wealth by his own efforts, does not want the ancestral property,—then, with a view to avoid future disputes arising from the claims put up by his descendants over his share in the ancestral property,—the other Brothers shall give him something out of that partible property and separate him from the joint family—(*Smṛtichandrikā*, p. 617).

If a Brother, relying upon his capacity, has no desire to take anything out of the ancestral property, he shall be given some little thing,—in the shape of a seer of rice, for instance,—and then separated; in order to preclude the possibility of claims being set up at some future time by the Son and other descendants of the said Brother—(*Dāyabhāga*, p. 66; and also *Smṛtitattva* II, p. 171).

What is said here is in reference to a case where one of the coparceners is capable of maintaining himself and hence does not desire to take his share in the ancestral property—(*Vīramitrodaya*, p. 572).

If a coparcener, being quite competent, renounces his share in the joint property, he should still be given something and be excluded from the property,—for the purpose of lending finality to the partition. If this were not done, his Sons would raise disputes in regard to their Father's share in the ancestral property—(*Dāyanirṇaya* 22.1.1).

See *Yājñavalkya*, 2.116.

* If a Brother has died before the property has been divided, his Son,—who has not received any share in the property from his Grandfather—shall receive his

Dēvala—

[904] 'Among such kinsmen as are living together—divided or undivided,—there may be re-partition of the property up to the fourth generation;—such is the law.'

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own Father's share, from his Uncle or Uncle's Son. So also the Son of that Son; after whom it will lapse—(*Aparārka*, p. 727).

What is meant is that, if among the Brothers, one is not alive, his share in the property does not cease to go to his Son—(*Vivādaratnākara*, p. 482).

In a case where the Father, *A*, dies first, then the Grandfather, *B*,—the property of *B* is to be divided among his Sons and *Grandsons and Great-grandsons* (these latter being the Sons and Grandsons of *A*),—these latter receiving the share that would have been their Father's—i.e. *A*'s—(*Dāyanirṇaya* 21.2-8).

If a Son has died before the partition of the property, then the Father of that dead Son shall allot the share of that Son to the Son of this latter.—In case he has not himself received a living from his Grandfather—i.e. if his Father's Father has died without allotting the said share to him, then he shall receive his Father's share from the undivided Uncle or Uncle's Son. Similarly also the uterine Brothers of the said Son.—It might be argued that—'on the analogy of this rule, the said Son shall receive his Father's share in the latter's Mother's property also'.—But this could not be so; as the text contains the qualification 'undivided', which implies that the inheriting of the property here spoken of is that of that person only with whom division (partition) is possible; and no division is possible between the Mother and the Son.—In case the dead Son has left no Son, but Grandsons, these latter are to receive shares in accordance with the share of their respective Fathers—(*Vivādachandra* 20.1-3).

'*Jīvanam*'—Inheritance.—In the same case, if the dead Brother has several Sons, the same share shall go to all of them.—'*Labhēta tatsuto vāpi*':—the meaning is that the Son of the Grandson of the original owner of the property shall receive his Father's share, in the absence of his Father. If this Son of the Grandson is also not living, then the next in descent among the descendants of the dead Brother shall not receive any share in the property of his Great-great-grandfather.—An objection may be raised—"As a matter of fact, the Great-grandson also cannot inherit the property of his Great-grandfather; as the rule is that only Sons and Grandsons shall inherit the property of the Father and the Grandfather".—True; but just as in the case of the Mother's property, the ownership of the Son is established on the Mother's death, after his offering the funeral cake, by the mere fact of *being alive*,—so in the same manner the ownership of the Great-grandson over the Great-grandfather's property also would be established.—Thus it follows that whoever offers the funeral cake to a dead person—either as Father, or Grandfather, or Great-grandfather,—also inherits his property—(*Smṛtichandrikā*, pp. 647-648).

In a case where, between the two Sons of a man, one has died before partition,—the Son of that man is there, but he received no property from his Grandfather, before he died, then the allotment shall be made as laid down in this text.—'*Labhēta tatsuto vā*'; the meaning of this is that the Son of the Grandson of the original owner of the partible property shall receive his Father's share, when this Father is not alive,—after that among his further descendants, the inheriting of the Great-great-grandfather's property ceases—(*Parāsharamādhava*, pp. 337-338).

'*Nijē*'—Brother. '*Tatsutam*'—the Brother's Son.—'*Jīvanam*'—share; this share being the 'Father's share'.—'*Tatsutaḥ*'—the Great-grandson of the person whose property is being partitioned.—There is '*lapse*', '*parataḥ*'—i.e. after that; i.e. the Son of the Great-grandson does not receive a share—(p. 575).—Here *Kātyāyana* has distinctly restricted the inheriting-rights to the Son, the Grandson and the Great-grandson only—(*Vīramitrodaya*, p. 643).

Kātyāyana here lays down the order of inheritance among the Son, the Grandson, etc.—'*Jīvanam*'—provision for maintenance.—If among Brothers, one has died, then his Son should be given his Father's share. In a case where the dead Brother has more than one Son, their Father's share shall be divided among them.—Similarly the Son of this Son also shall receive the share; the Son of this last, however, shall not receive anything.—All this refers to cases where they are all living together—(*Smṛtitattva* II, p. 190).

'*Parataḥ*'—i.e. after the Great-grandson.—On the death of the Father, Grandfather and Great-grandfather,—the Son of the Great-grandson does not receive a share in the property of the last,—if any Son or other nearer descendants are living.

That is, the partition of the property may be made only up to the fourth generation including the original proprietor. That this same rule is applicable also to those who have been divided, but are subsequently reunited and live together,—is implied by the qualification '*living together*'.*

Vashiṣṭha—

[905] 'There is partition of inheritance among Brothers,—as also for childless women till they get a Son.' [*Quoted again in Text No.* 1031.]

The 'women' meant are the Wives of the Brothers. So what is meant is that if there is a widowed Sister-in-law who is expected to be carrying, she also should be provided with a share; when she has been delivered, that share shall go to the Son born to her. In case no Son is born, that share shall revert to her Husband's Brothers and others.†

But in case the Son, Grandson and Great-grandson—all these are not alive, then the Great-grandson's Son shall certainly receive the property.—This refers to cases where the members concerned have become reunited after partition,—not where there has been no partition at all—(*Vyavahāramayūkha*, p. 101).

* Among undivided kinsmen living jointly,—or among kinsmen divided but reunited,—there can be redistribution of property only among the Brothers, their Sons and Grandsons; it shall cease with the Sons of their Grandsons, who would constitute the 'fourth degree of descent'—(*Vivādaratnākara*, p. 482).

Among kinsmen who are '*avibhakta*'—i.e. with *undivided* property—and who are '*vibhakta*'—i.e. descended in different lines and yet belonging to the same root-dynasty of the prime owner of the property, who have *lived together* '*bhūyaḥ*'—i.e. for a long time—the right to inherit property shall extend up to the fourth generation, i.e. up to the Great-grandson of the prime owner—(*Smṛtichandrikā*, p. 648).

'*Up to the fourth generation*'—i.e. extending down to the Son, the Grandson and the Great-grandson.—The meaning is that when there is re-partition among members of a family not divided,—or among those who have become reunited after partition,—it shall extend to the Brother, the Brother's Son and the Brother's Grandson—(*Dāyanirṇaya*, 2.2–9).

There shall be no partition after the fourth degree.—This, however, refers to cases where the parties are living together; it does not preclude the allotment of shares to those who have returned from foreign lands; it shall cease with the Sons of the said Grandsons, who would constitute the *fourth degree*—(*Vivādachandra* 20.2–5).

Shares can be allotted to the direct heir, or (in his absence) to the heir's Son, or (in the absence of this latter) to the heir's Grandson; or (in his absence) to the heir's Great-grandson; but no further; i.e. one is not entitled to receive a share in the property of his Great-great-grandfather—(*Parāsharamādhava*, p. 438).

The meaning is that there can be partition of the property left by the original owner, only among his descendants up to the fourth degree. This same rule applies to the case of those who have been divided and become reunited—(*Vīramitrodaya*, p. 573).

In a case where among several Brothers one is not living, his share shall be given to his Son; if this Son also is not living, then the share of the said Brother shall be given to his Grandson; after that the share lapses.—That is, among undivided co-sharers living together,—or reunited after separation,—there shall be readjustment of shares only in regard to the Brother, his Son and his Grandson. In accordance with this, the Wife also of the Great-grandson only shall be entitled to receive a share—(*Smṛtitattva* II, p. 190).

When a man dies after his Son, Grandson and Great-grandson have all died,—his property shall be inherited by his Great-great-grandson; it goes no further.—But this refers to those who have become reunited after separation,—not to those who have not separated at all—(*Vyavahāramayūkha*, p. 101).

† Such women as may have had no child, but had conceived and become widowed before delivery,—are also entitled to share the inheritance, until the Son is born; if a Son is not born, the share reverts to the coparceners;—such is the sense of the phrase '*till they get a Son*'—(*Aparārka*, p. 728).

If there are *women* [*Brother's Wives*, says the *Bālambhaṭṭī*] on whom signs of pregnancy are quite discernible, the partition shall be postponed till their delivery—(*Mitākṣarā*, pp. 655-656).

In continuation of the word '*pituḥ*', 'of the Father', says *Bṛhaspati* (25.64)—

[906] 'On his death, the Mother receives the same share as her Sons; their Mothers are equal sharers with them, and the Girl is entitled to the fourth part of a share.'

'*On his death*'—i.e. on the *Father's* death;—the '*Mother*'—i.e. the one who has Sons.—'*Mothers*'—i.e. Step-mothers who have no Sons;—all these latter are '*equal sharers with them*'—i.e. they shall have shares equal to the Sons.—The Sisters of these co-sharers, *who are unmarried*, receive, for the purposes of their marriage, the fourth part of the share assigned to their Brothers.*

Nārada (13.33)—

[907] 'Those whose sacramental rites have not been performed in due course, —for them those rites shall be performed out of the paternal property.—In case there is no paternal property, those Brothers who have already had their sacraments performed should perform the same for their Brothers, taking what is necessary out of their own shares.'

'*Sacramental Rites*'—those ending with the *Upanayana* (Sacred Initiation).†

If there are women in whom signs of pregnancy are clearly discernible, the division of the property shall be made in expectation of the delivery—(*Madanapārijāta*, p. 656; also *Parāsharamādhava*, p. 341).

'*Striyaḥ*', 'women' stands here for the Brother's Wives. The meaning is that, if any of the Brother's Wives are supposed to be carrying, shares are to be assigned to them also; if no Son is born, the shares shall revert to the Brothers and the woman shall receive maintenance only—(*Vīvādaratnākara*, p. 483).

If any of the *Father's* or Brother's Wives evince clear signs of pregnancy, then the division of the property should be postponed till the delivery. The phrase '*till she gets a Son*' indicates that there is to be postponement in case the signs of pregnancy are clearly discernible,—not if they are not so discernible—(*Vīramitrodaya*, p. 589).

If there is no Son, the pregnant woman shall receive a share; in case she does not give birth to a Son, that share shall be resumed by the Widow's Husband's Brothers and other coparceners—(*Vibhāgasāra* 4.2–6).

* What this clearly means is that the Mothers belonging to the several castes shall receive the same share that has been ordained for the Sons belonging to the same caste as themselves; and the Daughter also shall receive the fourth part of the share that has been ordained for the same caste as herself—(*Vīramitrodaya*, p. 582).

The term '*jananī*', 'Mother' (in the first line) stands for one who has Sons of her own; and '*mātaraḥ*', 'Mothers' (second line) for those who have no Sons of their own.—'*Turīyamshā*'—the fourth part of the share ordained for a Son of that caste to which the Girl belongs;—this is to be given to her for her marriage.—The term 'Girl' stands for the *unmarried* Daughter.

On the death of the Father, the Mother *with Sons* and the *Step-mothers* of those Sons receive the same share as the Sons; and their unmarried Sisters receive the fourth part of the share of their Brothers—(*Vibhāgasāra* 4.2–8).

The meaning is that, on the death of the Father, the '*Mother*'—i.e. the Wife *with Sons*,—as also the '*Mothers*'—Step-mothers,—all these receive the same share as the Sons—(*Dāyanirṇaya* 20.2–10).

† The 'rites' referred to here are those beginning with the 'Birth-rites' and ending with the 'Sacred Initiation'—(*Vivādaratnākara*, p. 493).

The meaning is that, if there are Brothers whose sacraments have not been performed by the Father, enough should be set apart out of the paternal property for the performance of those rites.—If there is no paternal property, the Brothers shall set aside funds out of their own shares for the performance—(*Vivādachandra*, 20.2–6).

Vyāsa—

[908] 'The sonless Wives of one's Father have been declared to be equal sharers; and the Father's Mothers have all been declared to be equal to the Mother.'*

Yājñavalkya (2.123)—

[909] 'When the Sons are dividing the property after the Father's death, their Mother also receives an equal share.'†

In view of the pronouns '*yēṣām*' and '*tēṣām*' (which are both in the Masculine form), this text should be taken as referring to *Brothers* only—(*Dāyabhāga*, pp. 70-71).

The opinion expressed in the *Dāyabhāga* is not right; the performance of the sacraments as essential for the *Sisters* as for the *Brothers*; the Masculine Gender in the pronouns should be taken in the *impersonal* sense;—or the form may be taken as an '*Ēkashēṣa* compound (standing for (*a*) '*Yāsām cha yēṣām cha*', and (*b*) *Tāsām cha tēṣām cha*') so as to include both the Masculine and the Feminine—(*Vīramitrodaya*, p. 584).

The 'sacraments' meant are all, ending with the Initiation—(*Vibhāgasāra* 4.2–10).

The sacraments meant here are those ending with the Initiation; such is the implication of the obligatory term '*avashya*'; the *Marriage* being not quite obligatory, as it can be omitted in the case of those who wish to remain *Life-long Students.* In the case of Sisters however, the *marriage* being the substitute for Initiation, for women, the performance of the marriage would be obligatory; hence for this also funds should have to be set aside by the Brothers out of their own shares—(*Smṛtichandrikā*, p. 628).

* What is meant is that, when the property is divided equally among Sons, the sonless *Daughter-in-law* also should receive the same share.—'*Pituḥ*' is *not* to be construed with '*patnyaḥ*',—so that the 'Wife of the *Father*' cannot be meant.—This Daughter-in-law is to receive this equal share only in case she has not got any *Strīdhana*,—as declared in *Yājñavalkya* 2.26—(*Smṛtichandrikā*, p. 623; or *Dāyabhāga*, pp. 67-68).

This refers to cases where the Wives have not been given any *Strīdhana*—(*Aparārka*, p. 730).

'*Sarvāḥ*', 'all', is meant to include the Father's *Step-mothers*.—This text lays down the shares of the Step-mother and the Step-grandmother—(*Vyavahāramayūkha*, p. 100).

In the case of partition made during the Father's lifetime, every one of his Wives is to receive a share equal to that of the Sons; but in the case of partition made after the Father's death, it is only the Mothers of the Sons who are to receive shares equal to the Sons', while those that have no Sons receive only food and clothing.—Such appears to be the implication of the opinion expressed by many legal digests. But the Author of the *Mitākṣarā* appears to hold the view that both sets of Wives—those with Sons, as also those without Sons—are to receive shares equal to the Sons'. Such also is the view of the *Madanaratna*—(*Vīramitrodaya*, p. 579).

† The Mother, who has no *Strīdhana* of her own, shall receive a share equal to that of her Son.—The term 'Mother' here stands for the 'Father's Wives' in general,—as all these would be equally related to the Father—(*Vishvarūpa*).

After the Father's death, when the Sons are dividing the property,—i.e. at the partition among Sons,—the Mother also shall receive an equal share.—No significance attaches to the Plural Number; so that the meaning is that the share of Mother shall be the same as that of a Son.—The term 'Mother' stands for all the Co-wives—(*Aparārka*).

In 2.115, *Yājñavalkya* (Text No. 881 above) has laid down that, 'if the Father is making a division of the property during his lifetime, he shall make his Wives *equal sharers*'; the present text lays down that, even when the division is taking place after the Father's death, his Wives are to receive shares 'equal to their Sons'; i.e. the Mother's share shall be equal to that of her Son;—*if no Strīdhana has been given to her*; in case *Strīdhana* has been given, she shall receive half-a-share, as declared by *Yājñavalkya* under 2.145—(*Mitākṣarā*).

[The 'Mother' here includes the Step-mother also—adds the *Bālambhaṭṭī*.]

Kātyāyana—

[910] 'If a certain property had been concealed and is found out afterwards, that also shall be divided equally among the Brothers; and in the absence of the Brothers, among the Sons of the Brothers.' *

[911] 'If anything had been taken by any one among themselves,—and if anything had been wrongly divided,—on being found out, it shall be divided in equal shares; so says *Bhṛgu*.' †

Where the property is being divided after the Father's death, it is not only the Brothers (Sons of the Father) who shall receive shares, but also the Mother and *Step-mothers*; the latter being included by the force of the particle '*api*'—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

In reality, women are not entitled to any inheritance; all that the present text means is that 'something' may be given to the Mother (not a regular *share* in the property)—(*Vivādachandra* 21.1–7).

What is meant is that on the death of the Father, when the Sons are dividing the property, their Mother shall receive an equal share.—This text has to be taken along with two qualifications—(*a*) 'to one to whom *Strīdhana* has *not* been given', and (*b*) 'to one to whom *Strīdhana* has been given, only half a-share shall be given'. —Such is the opinion of *Vijñānēshvara, Dhāreshvara* and others.—Another view is that in the text where '*half*-a-share' has been declared as to be given to the Mother to whom *Strīdhana* has been given, the term 'half' stands for *equal parts*; so that in a case where the Mother has already got her *Strīdhana* she shall receive half out of her Son's share; i.e. if the value of the Son's share is 10 *Niṣkas*, she shall receive 5 *Niṣkas* . . . When the Father and Son are making a division, among themselves, of the Grandfather's property,—the Wife of that Grandfather shall receive an equal share, if she has a Son; if she has no Son, she shall receive only what may have been given to her as a loving gift, and she shall not be entitled to any share in the property. In this Grandfather's property, the 'Mother'—i.e. the Grandfather's Daughter-in-law—shall not receive a share; she shall receive only ornaments and such things. Because both these texts—(*a*) 'If the Father is making equal shares, his Wives shall be made equal sharers', and (*b*) 'when Sons are dividing the property after the Father's death, their Mother shall receive an equal share'—are meant to apply to such properties as belonged primarily to the Father,—i.e. such property as the Father had inherited as his share or had acquired as gifts—(*Madanapārijāta*, pp. 663-664).

What is meant is that at the time of partition, the sonless Widow should receive a share; as each such Widow has to be supported—(*Vibhāgasāra* 5.1-2).

Though there are several texts which speak of women as being 'not entitled to inheritance', yet they are not inconsistent with the present text; because '*amsha*', 'share', is not the same thing as 'inheritance'; e.g. members of trading corporations receive 'shares', but that is not 'inheritance'—(*Smṛtichandrikā*, p. 623).

This share shall be given only in cases where the Mother has had no *Strīdhana* given to her; if it had been given, she shall receive only *half*—(*Parāsharamādhava*, p. 341).

This share is to be given only in case no *Strīdhana* had been given; where it had been given, she shall receive only 'half'. 'Half' does not mean exactly *half*, but that much which, along with her *Strīdhana*, would make her property equal to her Son's.—The term 'Mother' here stands for *jananī, one who has given birth to Sons*; hence it cannot include the *sonless* Step-mother; the word, used only once, cannot stand for both the *primary* and the *secondary* Mothers—(*Vīramitrodaya*, p. 578).

* In a case where, at the time of partition, some one had concealed some property deceitfully, creating the impression that it belonged to a stranger,—but on investigation, it is afterwards found that it really forms part of the joint property, —then it shall be divided equally. If, by the time, the original coparceners have died, it shall be divided among their Sons—(*Smṛtichandrikā*, p. 714).

† See Text No. 990 where this same text is again quoted and commented upon. '*In equal shares*'—i.e. in shares equal to the previous shares,—says *Vivādachintāmaṇi* itself later on when dealing with the same text on p. 224 of the printed text.

'*On being found*'—i.e. that which had been stolen or lost at the time of partition and which has been recovered after the partition—(*Vivādachandra* 23.2–5).

[912] 'When a man has gone away to a foreign country, leaving a joint estate, his share should certainly be given to his descendant when he comes back; be he the third or the fifth, or even the seventh, in descent, he shall receive the share belonging to him by right of succession,—on his birth and family-name being ascertained'—(*Bṛhaspati* 25.24).

This refers to a man who had gone away to and has returned from foreign lands.*

Again—

[913] 'He whom natives of the place and neighbours know to be the owner,—to the descendant of that man must the landed property be surrendered by his kinsmen whenever he comes forward.'†

SECTION (C)—PERSONS PRECLUDED FROM INHERITANCE

Says *Bṛhaspati*—

[914] 'A Son, even though born of a Mother of the same caste as the Father,—if he is devoid of good qualities,—is not entitled to inherit the Father's property; it has been declared to belong to those of his *Sapiṇḍas*‡ who are learned in the Veda.' §

'*Wrongly divided*'—i.e. divided in unequal shares; in a manner contrary to law—(*Smṛtichandrikā*, p. 714).

What has been divided unequally, in a manner contrary to law, should be equalised.—Inasmuch as this text lays down the re-partition of that only which had been deceitfully kept back, it follows that there can be no re-partition of what has been already properly divided—(*Parāsharamādhava*, p. 383).

'*Angongāpahṛtam*'—taken by each man according to his own wish.—'*Durvibhaktam*'—inequitably divided—(*Vibhāgasāra* 5.1–4).—The coparcener who has been enjoying the property shall not be required to make good what he has enjoyed. That such is the sense is clear from the term 'in equal parts'—(*Vibhāgasāra* 12.1–9).

* The present text refers to cases where the person concerned has been away in foreign lands, or living in inaccessible places—(*Vivādaratnākara*).

In a case where the man has relinquished his co-residence in the family-house and also the country itself, and has gone to live in a far-off country,—and during his absence, his kinsmen, not knowing of his existence, have divided all the property among themselves;—if this man subsequently returns home, his share should be given to him. In this case, the ignorance of the existence of the man being due to his own remissness, no other alternative has been mentioned; that is why the text has added the term 'certainly'.—Similarly if the person returning after partition is a Grandson or a still lower descendant of the original owner who had migrated, he is entitled to a share in the ancestral property only—(*Smṛtichandrikā*, pp. 712-713).

The meaning is that, if a member of the joint family has returned after a long residence abroad, he shall receive his share in the property, if he is recognised by the relative of the place and others living in the neighbourhood—(*Dāyabhāga*, p. 133).

These texts are not authoritative—(*Vyavahāramayūkha*, p. 134).

This refers to one who has gone abroad to foreign lands—(*Vibhāgasāra* 5.1–6).

† In a case where the man has turned up after partition,—or even before partition,—and proceeds to claim his property, he is entitled to receive it only if he establishes his claim by means of evidence temporal as well as super-physical,—not otherwise—(*Smṛtichandrikā*, p. 713).

‡ The text reads '*tatsapiṇḍah*', which means as above. Some digests read '*tatpiṇḍadāh*', which has been explained as 'those who offer the funeral cake to the Father'; or 'those who supply food and clothing to the disqualified Son'.

§ '*Aguṇavān*'—devoid of all such qualities as would be conducive to the material and spiritual welfare of the Father—(*Smṛtichandrikā*, p. 631).

Manu (9.214)—

[915] 'All such Brothers as are addicted to evil deeds are not entitled to inherit property.'

'*Vikarmasthāḥ*'—addicted to acts against the law.*

Shaṅkha—

[916] 'Inheritance, Funeral Cake and Water-offerings become precluded from the Outcast.'

That is, the man who has become an 'outcast'—i.e. been excommunicated by his relations on account of some extremely reprehensible vice,—ceases to to entitled to (*a*) inherit the Father's property, (*b*) to perform *Shrāddha*, and (*c*) to make water-offerings.†

Manu (9.201–203)—

[917] '(A) Eunuchs and Outcasts, the congenially blind or deaf, the insane, the idiot or the dumb,—as well as those with deficient organs,—are not entitled to shares.—

'*Aguṇavān*'—not possessing the qualities indicated in the saying—'A true *Son* delivers the Father from good as well as bad debts'.—'*Tatpiṇḍadāḥ*' (v.l. for '*tatsapiṇḍāḥ*')—those who provide food and clothing for the disqualified (and disinherited) Son—(*Vivādaratnākara*, p. 487).

This refers to cases where the person concerned is entirely devoid of all good qualities—(*Vibhāgasāra* 5.1–10).

'*Tatpiṇḍadāḥ*'—those who offer the funeral cake to the owner of the property; that is why the epithet '*learned in the Veda*' has been added.—It means 'those who provide food and clothing to the disqualified Son'—according to the *Ratnākara*. Even on this view, the persons should be such as would offer the funeral cake to the owner of the property,—i.e. the dead Father—(*Smṛtitattva* II, p. 172).

* '*Vikarmasthāḥ*'—doing such acts as are forbidden—(*Medhātithi*);—such as *Brāhmaṇas* addicted to acts like Cattle-tending, Serving a *Shūdra* and so forth—(*Sarvajñanārāyaṇa*);—most of whose acts are such as have been forbidden—(*Nandana*).

Such Brothers as, though not quite outcasts, are addicted to such evil deeds as Gambling, Associating with a courtesan and so forth, do not deserve to inherit property—(*Kullūka*).

Those who are addicted to Gambling, Drinking and such acts get only maintenance, not shares in the property—(*Rāghavānanda*).

Such Brothers are not entitled to shares in the property—(*Rāmachandra*).

'*Vikarmasthāḥ*'—entirely addicted to such acts as are forbidden. '*Dhanam*'—such property as is partible—(*Smṛtichandrikā*, p. 631).

'*Vikarmasthāḥ*'—addicted to Gambling, etc.; according to others, 'always engaged in causing injury to the family'—(*Vivādaratnākara*, p. 486).

The meaning is that such persons are debarred from inheritance as are not entitled to the performance of *Shrauta* and *Smārta* rites and are also addicted to evil deeds—(*Vīramitrodaya*, p. 713).

Here *Manu* declares that a misbehaving Son is not entitled to inheritance if there are other Sons who are better qualified—(*Vyavahāramayūkha*, p. 164).

'*Vikarmasthāḥ*'—addicted to evil and forbidden acts—(*Vibhāgasāra* 5.7–11).

† '*Apapātritaḥ*'—is the person who, having committed a degrading sin, has been excommunicated by his relatives.—'*Ṛktha*' is paternal property, as also the property of an Agnate, for one who stands in the relation of a Son to the deceased person—(*Aparārka*, p. 720).

'*Apapātritaḥ*'—is one who has become excommunicated by his relatives on account of his having committed a heinous crime, such as injuring the King and the like—(*Vivādaratnākara*, p. 486).—One who has been excommunicated by his relatives disgusted with his harmful behaviour and other defects—(*Vivādachandra* 21.1-2).—'Whose water has been separated'—i.e. who has been excommunicated—(*Vīramitrodaya*, p. 713, where the text is attributed to *Āpastamba*).

'*Apapātritaḥ*'—one who, by reason of such heinous crimes as striking the King and the like, has been excommunicated by his relatives; such a person is not entitled even to offer the funeral cake—(*Vibhāgasāra* 5.1–11).

[918] '(B) But it is fair and proper that the wise man should give even to all these food and clothing to the best of his ability, as long as they live; not giving this, he would become degraded.—

[919] '(C) If the Eunuch and the rest should somehow happen to have a longing for a Wife, the child of such of them as have issue is entitled to inheritance.'

'*Nirindriyāḥ*'—devoid of hands or feet or such other limbs.

The upshot of the whole is that those persons are precluded from inheritance who are incapable of performing the *Shrauta* and *Smārta* acts (duties prescribed in *Shruti* and *Smṛti*).—The Sons of these, however,—with the exception of the Son of the *Outcast*,—*are* entitled to inheritance.*

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* (B)—'*Food and clothing*'—which are necessary for the keeping of the body. The implication is that they should be provided with enough to enable to engage servants, etc.; specially because, in the case of the blind and the rest, living would be impossible without a servant. For those again to whom marriage is permitted, the provision made should include that for the Wife also.—(C) When there is desire to marry, they shall marry; and the child born of such marriage,—whether a Son or a Daughter—shall have a share in the property.—The phrase 'and the rest' does not include the *Outcast* and the like.—Or the text may be taken as applying to the case where the man has become insane, or otherwise disabled, after having been 'initiated' and 'married'.—The older writers have found in this rule something that is usefully applicable to the case of such marriages as are contracted for purely religious purposes; so that for the *Eunuch* also,—who is entitled to perform the acts prescribed in the *Smṛtis*—it is only right that there be marriage, even in the absence of sexual desire; as for the rites prescribed in the *Shruti*, they can be performed only in the *Shrauta* fire, which can be installed only by one who has already got a Son; so that the Eunuch could never be entitled to the performance of these—(*Medhātithi*).

'*Klībaḥ*'—one whose impotency is incurable.—'*Patita*',—one who has committed a heinous crime and has not performed the expiatory penance.—'*badhira*'—suffering from congenital deafness.—'*Insanity and the rest*' are meant to be such as are incurable.—'*Jaḍa*'—one whose organs of action are not under his control.—'*Nirindriyāḥ*'—those unable to have any sensations.—(C) '*Arthitā*'—implies connection with Wife.—'*Utpannatantūnām*'—when children are born to them.—Even those Brothers who have become separated before the birth of such children should give to these children the share that would have been their Father's. As regards the *Eunuch* and the *Outcast*, if these have been already married, then, on the birth of their *Kṣētraja* Son, this latter becomes entitled to a share in the inheritance—(*Sarvajñanārāyaṇa*).

(A) The impotent, the outcast, one suffering from congenital blindness or deafness, the insane, the mad, the idiot, the dumb, the cripple, the lame or one whose organs are deficient,—these do not receive shares in the property; they are entitled to only food and clothing.—(B) The man who does inherit the property, if he knows the law, should provide food and clothing to these, throughout his life, to the best of his ability.—(C) '*Kathañchana*'—this implies that 'the *Eunuch* and the rest' are not fit for marriage; if somehow there arises in them a desire for marriage, and they do marry, then, on the birth of their *Kṣētraja* Son,—and in the case of others, their regular Sons,—these become entitled to the share in the property —(*Kullūka*).

(A) '*Jaḍa*'—one devoid of ambition.—'*Nirindriyāḥ*'—those without hands and such limbs.—(B) All these eight persons have got to be supported; this has been declared by *Yājñavalkya* also.—(C) If the Eunuch and the rest have a desire to obtain children, and marry for that purpose,—if they do have issue, then their *Kṣētraja* or other Sons become entitled to inheritance—(*Rāghavānanda*).

(C) The reference is to the *Kṣētraja* one—(*Nandana*).

The texts describe those not entitled to partition. Those born blind or deaf are not entitled to any share in the property.—'*Unmatta*'—one who suffers from nervous trembling and the like, from the obsession of planets, or from the disorders of the three humours of the body, Wind, Bile and Phlegm.—'*Jaḍa*'—one whose mind is deranged and who is unable to ascertain what is good for himself.—'*Nirindriyāḥ*'—those who have lost an organ through disease.—(C) '*Utpannatantū-*

Yājñavalkya (2.140)—

[920] '(A) The Outcast and his Son, the Impotent, the Lame, the Insane, the Idiot, the Blind, and one suffering from an incurable disease, have no shares; they have got to be supported.'

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nām'—i.e. of the Sons. For the Eunuch, the only Son possible is the *Kṣētraja*; for others, 'body-born' Son also is possible—(*Rāmachandra*).

Inasmuch as the Eunuch and the rest are spoken of as 'having Wife', it means that their *Upanayana* has been performed.—It will not be right to argue that—'the text *C* refers to the case where the man has already married and subsequently become struck by blindness and the other disabilities'. Because, if that were so, then 'the born blind' should not have been mentioned in the preceding text (A).—It may be that the blind and the rest, not having gone through the ceremony of the *Upanayana* and marriage, are not entitled to the performance of sacrifices; but they are perfectly entitled, like the *Shūdra*, to the performance of works of public utility. For this reason the fact of their not being entitled to inheritance is due, not to their being not entitled to perform the acts, but to the authoritative declaration to that effect in the texts themselves—(*Aparārka*).

(A) '*Nirindriyāḥ*'—those who, as a result of some disease, have lost a sense-organ.—These, the Eunuch and the rest, do not share in the property; they have to be supported with food, clothing and other gifts.—(B) '*Atyantam*'—throughout life. The fact of their being not entitled to inheritance would be right only if it referred to cases where the blindness or other disabilities have appeared *before*, not *after*, partition. Even after partition, if the disability is cured by medication, the person does become entitled to his share in the inheritance. In the terms '*patita*' and the rest, no significance attaches to the Masculine Gender; so that, even in the case of Wife, Daughter, Mother and others,—if they happen to be blind and so forth,—they are not entitled to a share in the property—(*Mitākṣarā*, pp. 836–838).

(A) '*Nirindriyāḥ*'—Those who have lost a sense-organ through disease or such causes. These are not to receive shares in the property, but have to be supported.—'*Atyantam*',—as long as they live.—These persons are not to share in the partition; not so if, though before partition, they suffered from the said disabilities, yet, after the partition, they got rid of them by medication,—or if they have performed the necessary expiation. In this latter case, the person concerned becomes entitled to a share in the property, in accordance with the rule that—'if a Son is born, after partition, of a Wife of the same caste as oneself, he is entitled to inheritance'.—In the terms '*patita*' and the rest, no significance attaches to the Masculine Gender; hence, Mother, Wife, Daughter and the like also, if suffering from disabilities, are not entitled to shares in the property.—The Eunuch and the like are themselves excluded, not their Sons and others, if these latter are not themselves suffering from any disability—(*Madanapārijāta*, p. 682).

(A) In the compound '*jātyandha*', the term '*jāti*' connotes the *incurability* of the blindness, not that it must be *congenital*.—'*Jaḍa*'—one who cannot discriminate between others and himself.—'*Nirindriya*'—the lame and the like, who are not entitled to the performance of the religious rites prescribed in *Shruti* and *Smṛti*.—(B) '*Sarvēṣām*'—of the Eunuch and the rest.—'*Atyantam*'—as long as they live.—(C) In the compound '*Klībādīnām*'—'of the Eunuch and the rest'—the *Klība*, Eunuch, is meant to be included, as he is absolutely unable to beget a child. The Author of the *Prakāsha*, however, holds that '*Klība*' here stands for such impotence or incapacity to beget children as is due to a curable defect.—'*Tantu*' is *issue*—(*Vivādaratnākara*, p. 488).

'*Jaḍamūka*'—one who is dumb while being an idiot.—'*Eunuch*'—one who remains impotent even after medication. Some people hold that the compound '*Klībādīnām*' is *not* meant to include the *Klība* himself—(*Vivādachandra* 21.1-2).

Here *Manu* mentions those who are not entitled to inheritance—'*Nirindriya*'—whose organs have become defective.—'*Atyantam*'—throughout life—(*Parāsharamādhava*, pp. 366-367).

'*Nirindriya*'—one who has lost his generative organ *through disease*, and hence differs from the *Eunuch*. Some persons have explained this term to mean 'persons devoid of hands, feet and such limbs'.—These, the Eunuch and the rest, do not receive shares in the inheritance, but they have to be supported with food and clothing.—(B) '*Atyantam*'—throughout life.—Of the outcast and the person who has committed a *minor offence*, the disability to inherit lasts only till the

That is, the man suffering from Leprosy and such incurable diseases is not entitled to inheritance.

[921] '(B) The *Body-born* and *Soil-born* Sons of these, if free from defects, are to receive shares in the property'—(*Yājña.* 2.141).

[922] '(C) The Daughters also of these should be supported till they have been made over to their Husbands'—(*Yājña.* 2.141).

The Body-born Sons of the Outcast—meant are those born *before* the man became an Outcast; while those of the others may have been born even after (the appearance of the disabilities).—'*Sutāḥ*'—Daughters—are to be supported—if they are free from defects—i.e. are well-behaved.*

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requisite expiation has not been performed. If, through arrogance, they do not perform the penance, they become degraded.—This disability to inherit applies to these only if they have had the defects *before* partition; *after* the partition has been made,—if the defects appear, the shares that they have already received cannot be taken away from them; as there is no authority for such a course.—If, subsequently, the defect is removed, the persons become entitled to receive shares; so says *Vijñānēshvara*; and this is the right view, because the disability to inherit was based entirely on the presence of the defect; and the case of these persons would stand on the same footing as that of the Son born to one (from a Wife of his own caste) after partition, who is entitled to inherit.—In the terms '*patitaḥ*' and the rest, no significance attaches to the Masculine Gender; just as in the sentence '*Brāhmaṇona surām pibēt*'; hence the disability mentioned in the present text would apply to the case of the Wife, Daughter and others who have been declared entitled to inheritance.—'*Tantu*'—Child—(*Vīramitrodaya*, pp. 708–710).

'*Nirindriya*'—one whose olfactory and other organs have been destroyed by disease and such other causes—(*Smṛtichandrikā*, pp. 6, 9, 632).

'*Nirindriya*'—devoid of the olfactory and other organs.—These disinherited persons should be supported by those who have got the property—(*Vyavahāra-mayūkha*, pp. 163, 164).

'*Tantu*'—child.—It might be argued that the impotent person can have no generative potency,—and that the dumb and the rest, not having read the Veda, and not having their *Upanayana* performed, would be *outcasts*,—and hence there could be no possibility of these being properly married.—This cannot be right: because a Son (*Kṣētraja*) may be born to the impotent man with the help of another man; and the rest, even though they may not have their *Upanayana* performed, would be only like *Shūdras*, and not *outcasts*; hence all these persons could have *Sons*, 'body-born' as well as '*Kṣētraja*', and these Sons should be entitled to inheritance—(*Dāyabhāga*, p. 104).

* (A) The impotent man and the rest have no share in the property; but they are entitled to maintenance.—'*Klība*'—Eunuch, one wanting in virility.—'*Tatsutaḥ*' (v.l. '*tajjaḥ*')—born of the Outcast; though the Son of the Outcast is also an Outcast, yet he has to be mentioned separately; otherwise according to the next text (921), the Son of the Outcast would be entitled to inherit.—'*Paṅgu*'—Lame.—'*Unmattaka*'—suffering from insanity, which is a kind of disease.—'*Jaḍa*'—Idiot.—'*Andha*'—Blind.—'*Achikitsyaroga*'—one suffering from an incurable disease.—The term '*ādya*' ('and the rest') is meant to include those others who have been mentioned in other *Smṛti*-texts.—(B) '*Ēṣām*'—of the Eunuch and the rest; the *Aurasa* and *Kṣētraja* Sons receive the inheritance, if they are free from such defects as *being an Outcast* and the like; the impotent man obtains childrer by means of medication.—(C) The Daughters also of these have to be maintained till they are married.—These have to be maintained even though born of Outcasts—(*Aparārka*).

'*Tatsutaḥ*'—i.e. the Son born of the Outcast.—'*Unmattaḥ*'—obsessed by evil planets.—'*Jaḍaḥ*'—permanently devoid of intelligence.—'*Achikitsyaroga*'—suffering from Leprosy or such other foul and incurable disease.—The particle '*cha*' serves to include the deaf and the rest mentioned in other *Smṛtis*.—Some people have held the view that the lame and the rest stand for all those who are not entitled to the performance of the *Agnihotra* and other rites.—But this is not right, because wealth is meant for the *man*; and because the illiterate person, who is not entitled to perform any rites, has been declared to be fit for holding wealth; as is clear from such texts as—'The learned shall not give of his self-acquired property to the unlearned, unless he wishes to do so',—and 'the unlearned shall divide the property

[923] 'The sonless Wives of these should also be maintained, if they are well-behaved; if they are ill-behaved and hostile, they should be turned out'—(*Yājñavalkya* 2.142).

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equally'. Thus the fact that they are not entitled to inheritance rests upon the express prohibition in the texts themselves, not on the ground of their being incapable of performing sacrifices.—Or their disability to inherit may be regarded as being due to their existent disease, etc., being indicative of heinous sins committed in past lives. The long-established custom is that even the blind and the rest, if they are not Outcasts, do inherit the property that belonged to their Grandfather and other ancestors. The conclusion therefore is that the text only reiterates the propriety of the course that these persons should not use the property for any other purpose save their maintenance—(*Vishvarūpa*).

(A) Here we have an exception to the general rule regarding the Son, the Wife and other members of the joint family inheriting the property of the deceased.—'*Klība*'—one who is neither male nor female.—'*Patita*'—one who has committed a heinous crime, like killing a *Brāhmaṇa*.—'*Tatsutaḥ*'—Son born of the Outcast.—'*Paṅgu*'—Lame.—'*Unmattaka*'—oppressed by insanity due, either to the disorders of Bile, Wind and Phlegm, or to the obsession of planets.—'*Jaḍa*'—of disordered mind; who is unable to determine what is good and what is bad for himself.—'*Andha*'—deprived of eyesight.—'*Achikitsyaroga*'—suffering from some incurable disease, like Consumption.—The term '*ādya*' includes the following—one who has taken to another life-stage, one who is inimical to his Father, one who has committed minor sins, the deaf, the dumb, the person deficient in sense-organs. These have been mentioned by *Vashiṣtha* and *Nārada*,—also by *Manu* (9.201).—These persons (the impotent and the rest) 'have no shares',—i.e. they do not receive the inheritance; they have only got to be maintained by being provided with food and clothing. If they are not maintained, the person who has got the property becomes liable to be treated like an Outcast, as declared by *Manu* (9.202, Text No. 918 above).—This disability to inherit would be right only in cases where the defects (to which the disability is due) have been present from before the time of partition,—*not* if they appear after the partition. Even after the partition, if the defect is removed by medication, the man does become entitled to the inheritance.—In the terms '*patitaḥ*' and the rest, no significance attaches to the Masculine Gender; hence the Wife, the Daughter, the Mother and other females also should be regarded as not entitled to inheritance if they have any of the disabling defects enumerated above.—(B) The assertion of this disability of the impotent and other persons might give rise to the notion that the Sons also of these persons are debarred from inheritance: it is with a view to this that the text (B) has been added. Of these persons, the *Body-born* and *Soil-born* Sons, if free from defects,—i.e. such defects as constitute disabilities in the matter of inheritance,—'receive shares' in the property. In the case of the impotent person, only the *Kṣētraja*, 'Soil-born', Son is possible; in that of others, the 'Body born' also. The mention of these two excludes the other kinds of Sons. (C) A special rule is laid down in regard to the Daughters of the said persons: until they have their marriage-sacrament performed, the Daughters are to be maintained; the particle '*cha*' implies that the performance of the sacraments is essential—(*Mitākṣarā*).

(A) The term '*atha*' includes the *Deaf*, and '*ādya*' includes the *Dumb*, *one hostile to his Father* and others mentioned in *Manu* 9.201.—'*Tatsutaḥ*'—Son of the Outcast.—'*Jaḍa*'—one of low intelligence.—(B) The impotent and the rest having been precluded from inheritance, it would seem as if their Sons and Daughters were also precluded; hence the texts (B) and (C) have been added.—The 'Soil-born' Son of the impotent man, and the 'Body-born' Son of others,—if both of these are themselves free from the disabling defects,—do become sharers in the inheritance.—(C) The 'Soil-born' Daughters of the impotent and others, who are not sexless, should be as carefully maintained by the property-holders as their own Daughters, until they have been given away to their Husbands.—The particle '*cha*' (in B) implies that the Daughters should also have their sacraments performed—(*Vīramitrodaya-Ṭīkā* on *Yājña*.).

(A) '*Should be supported*'—by those who have inherited the property; *Viṣṇu* having declared that 'they have to be supported by those who have received the property'.—(B) What is said in regard to the *Kṣētraja* Son must be taken as applicable to the *Dvāpara* and earlier ages; as such a Son has been forbidden in the *Kali* age.—'*Sutāḥ*'—Daughters;—'*ēṣām*'—of those who have been declared to be not entitled to inheritance.—'*Shall be supported*'—by those who have shared the

'*Of these*'—of the impotent and the rest.—'*Hostile*'—inclined to administer poison, etc.*

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ancestral property of the disinherited persons. The Daughters shall be maintained in the same manner as their disinherited Fathers themselves,—but not throughout life,—only till they have been married—(*Smṛtichandrikā*, p. 631).

(A) '*Tatsutaḥ*'—Son of the Outcast who has not performed the expiatory penance.—'*Unmattaka*'—suffering from the incurable insanity due to the disorders of the humours and the obsession of evil planets.—'*Jaḍa*'—of defective intelligence,—incapable of distinguishing Right and Wrong.—'*Achikitsyaroga*'—suffering from an incurable serious disease.—'*Ādya*' stands for 'one hostile to the Father' and others mentioned by *Nārada* (p. 681).—(B) For the impotent person, only a *Kṣētraja* Son is possible; for others, both *Aurasa* and *Kṣētraja*. The special mention of these two implies that the other kinds of Sons are not entitled to inheritance; but the *Putrikā*, the Appointed Daughter, becomes included under the '*Aurasa*', as she has been declared to be 'equal to the *Aurasa*'.—(C) The Daughters are to be maintained till their marriage—(*Madanapārijāta*, p. 683).

'*Tatsutaḥ*'—the Son of the Outcast, born after he became an Outcast.—'*Jaḍa*'—of deficient intelligence.—'*Achikitsyaroga*'—suffering from an incurable disease, like Leprosy.—The term '*ādya*' includes those others who have been declared by other sages to be 'not entitled to inheritance', but entitled to maintenance.—The impotent, etc. having been precluded, it might be thought that their Sons are precluded; hence the next text is added—(*Vivādaratnākara*, pp. 488-489).

The 'Son of the Outcast' meant here is the one born after the man became an Outcast.—'*Achikitsyaroga*'—incurable diseases like Leprosy—(*Vivādachandra* 21.1–4).

(A) The term '*ādi*' includes the dumb and the rest.—These do not receive any share in the inheritance; they are only to be supported with food and clothing.—(B) Of these disinherited persons, only the *Kṣētraja* and *Aurasa* Sons shall receive shares,—not the Adopted and other kinds of Sons.—(C) The Daughters of the disinherited persons shall be maintained till their marriage, and they should be married also—(*Parāsharamādhava*, pp. 366-367).

(A) In the case of the impotent and the blind, if they have been so from birth, they are not entitled to any share; if the disability has come in later, then, on their being cured by medication, they become entitled to receive shares in the property out of what may have been left after the settlement of all assets and liabilities.—The term '*ādya*' includes the person who has entered another life-stage, one who is hostile to his Father, one who has committed a minor sin, the deaf, the dumb, one who is deficient in his organs,—mentioned by *Nārada* and *Vashiṣtha*.—(B) Even though the impotent and the rest are not entitled to inherit, their Sons are not debarred from inheritance.—'*Free from defects*'—i.e. those defects which have been indicated as bars to inheritance.—For the impotent, only the *Kṣētraja* Son is possible; for others, the *Aurasa* also. These two kinds of Sons have been specially mentioned with a view to exclude the other kinds—(*Vīramitrodaya*, pp. 710–711).

(A)—'*Paṅguḥ*'—one who cannot walk on his legs.—Even though these are debarred from inheritance, they have got to be maintained,—with the exception of the Outcast and his Son, who do not deserve to be maintained; as has been declared by *Dēvala*.—The '*Klība*' has been defined by *Kātyāyana* as 'one whose urine gives out no froth, whose excreta sinks in water and whose penis is devoid of erection and semen' (p. 102).—(B) Of the persons mentioned, the *Kṣētraja* and *Aurasa* Sons that may be there,—who are free from impotence and other defects—are to receive shares in accordance with the shares of their Fathers.—(C) Their Daughters have to be maintained till they are married—(*Dāyabhāga*, p. 104).

Persons debarred from inheritance have been enumerated here.—'If, even after partition, the impotence and other disabilities are cured, the persons receive their shares; just like persons *born* after partition—(*Vyavahāramayūkha*, pp. 162-163).

One who is suffering from an incurable disease is not entitled to inheritance.—The legitimate Sons of these men—born *before*, not *after*, their becoming *Outcast*, etc.—are entitled to inherit property; those born *after* are entitled to mere maintenance—(*Vibhāgasāra* 5.2–9).

* Their married and childless Wives should also be maintained, if they are well-behaved; if they are misbehaved, or inimical to their Brother-in-law and other relatives, they should be turned out of the house—(*Aparārka*).

This text lays down the special rule regarding the Wives of the impotent men and others. These Wives, 'if they are well-behaved'—i.e. of good character,—

Nārada (13.21)—

[924] 'One who is hostile to his Father, an Outcast, one Impotent, one Excommunicated,—such Sons should not receive a share, even though *Body-born*; how then could the *Soil-born* ones receive it?'

'*Hostile to his Father*',—i.e. one who, while the Father was alive, used to beat him and ill-treat him in other ways; and after his death is not inclined to perform the *Shrāddha* and other rites.*

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should be maintained; the ill-behaved have to be turned out; those who are inimical are also to be turned out; but these have to be maintained, if they are not ill-behaved, and the mere fact of their being 'hostile' will not deprive them of maintenance—(*Mitākṣarā*).

The Wives of these impotent and other persons,—those that had been married to them before their impotency or other disabilities had become definitely known,—if they are well-behaved,—of good character—are to be maintained. If they are ill-behaved, or very hostile, they should be turned out of the house. The particle '*cha*' includes such women as are addicted to drinking and such vices; and the particle '*ēva*' is meant to preclude the notion that such women should be maintained—(*Vīramitrodaya-Ṭīkā*).

Of the said disinherited persons, the married Wives,—if they are well-behaved,—shall be maintained by those who have taken the ancestral property of those inherited, in the same manner in which they maintained these men themselves. In case they are ill-behaved, or are hostile to their supporter, they should be turned out of the house; but those turned out on account of 'hostility' only should be maintained—(*Smṛtichandrikā*, p. 634).

The childless Wives of these men, if well-behaved—of pure character,—shall be maintained; those who are ill-behaved should be turned out; and those 'hostile' shall also be turned out, but shall receive maintenance; as these are not tacited with misconduct—(*Madanapārijāta*, p. 683).

'*Hostile*'.—The 'hostility' meant here is the proneness to administer poison and inflict such serious injuries, not mere *quarrelsomeness*—(*Vivādaratnākara*, p. 489).

Their Wives, if well-behaved, shall be maintained as long as they live—(*Parāsharamādhava*, p. 367).

Their childless Wives shall be maintained as long as they live—(*Dāyabhāga*, p. 104).

If the women are 'ill-behaved', they have to be turned out, without maintenance; if they are only 'hostile', they have to be turned out, but should receive maintenance (*Vyavahāra[illegible]*, p. 166).

'*Hostile*'—bent upon depriving him of his life by poison and such other means—(*Vibhāgasāra* 5.2–9).

* '*Pitṛdvit*'—one who causes injury to his father—(*Aparārka*).

'*Apapātritaḥ*'—one who has been declared to be 'unfit for association', i.e. who has been expelled by his relatives—(*Smṛtichandrikā*, p. 629).

'*Pitṛdvi*'—one who bears ill-will towards his Father;—such ill-will culminating in killing him, while alive,—and in not making the water and other offerings to him when dead.—'*Apapātritaḥ*'—excommunicated on account of some such crime as killing the King.—The Author of the *Prakāsha*, however, has read '*aupapātikaḥ*' for '*apapātritaḥ*', and explained it as 'one guilty of minor offences'—(*Vivādaratnākara*, p. 489).

The 'hostility' to the Father would consist in beating him during lifetime and in not making the water and other offerings to him after death—(*Vivādachandra* 21.1–9).

'*Apapātritaḥ*'—excommunicated by his relatives on account of such heinous crimes as hostility to the King; so says *Madana*. But the right reading is '*apayātritaḥ*', meaning 'one who has undertaken a forbidden journey', such as going to foreign lands by sea on boats; association with such a traveller being forbidden in *Kali*-age. The other reading ('*apapātritaḥ*') cannot be right as no texts have prescribed 'excommunication' as a penalty for hostility to the King—(*Vyavahāramayūkha*, p. 163).

'*Pitṛdvit*'—one who made his Father unhappy by causing him hurt; and who has ceased to offer *Shrāddha*, etc.—(*Vibhāgasāra* 5.2–10).

[925] 'Those afflicted with chronic and acute diseases,—also the Idiot, the Insane and the Lame,—are to be maintained by the family; but their Sons are entitled to shares in the property '—(*Nārada* 13.22).

'*Chronic*'—such as Consumption.—'*Acute*'—e.g. Leprosy.—'*Idiot*'—one incapable of discriminating right and wrong.

Dēvala—

[926] '(A) On the death of the Father,—the Impotent, the Leprous, the Insane, the Idiot and the Blind, the Outcast, the Child of the Outcast, and the Religious Hypocrite are not entitled to shares in the inheritance.—

'(B) All these, except the Outcast, are to be provided with Food and Clothing.—(C) Their Sons, if free from defects, shall receive their Father's share in the inheritance.'

'*On the death of the Father*'—this is stated only by way of illustration.—'*Religious hypocrite*'—one who is in the habit of excessive posing.—'*Defects*'—i.e. those that debar them from inheritance.*

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* '*Mṛtē pitari*'—even on the death of the Father.—'*Liṅgī*'—one who is too much addicted to practising religious hypocrisy—(*Vivādaratnākara*, p. 490).

(B) For the Outcast, no maintenance need be provided.—(C) The Son of the disinherited man, if he is himself free from disabling defects, is entitled to inheritance —(*Vivādachandra* 21.1–6).

(A) On the death of the Father, the impotent and the rest do not share in the property.—'*Liṅgī*'—the Life-long Hermit; the Hermit meant here is one belonging to one of the heretical sects.—The phrase 'on the Father's death' is meant to indicate the time of partition; so that even when the Father is making a division of the property during his lifetime, the impotent and other Sons do not receive any shares in the property. That is why *Āpastambha* has declared—'During his lifetime, the Father shall divide the property equally among his Sons, excluding the Impotent, the Insane and the like' (p. 629).—(B) Here we have an exception to the general rule that 'all disinherited persons shall receive maintenance'; the 'Son of the Outcast' is also to be included under the exception, as he also is an 'Outcast' (p. 632).—(C) '*Tatputrāḥ*',—Sons of the persons debarred from inheritance.—'*Free from defects*'—i.e. from such as are disabilities to inheritance.—'*Father's inheritance*'—i.e. the Grandfather's property.—This text should not be taken to mean that the *Son of the Outcast* also would be entitled to inherit the Grandfather's property, because the Outcast's Son becomes excluded on account of the 'defect' that he, being the Son of an Outcast, is himself an 'Outcast'—(*Smṛtichandrikā*, p. 633).

(B) The Outcast is not entitled to maintenance. The term 'Outcast' includes the *Outcast's Son* also.—(C) The Sons of those debarred from inheritance are entitled to inherit. Of those who have been debarred from inheritance, only the *Body-born* and *Soil-born* Sons,—if free from defects—impotence and other disabilities—are entitled to inheritance,—no other *Adopted* and other kinds of Sons—(*Parāshara-mādhava*, p. 367).

(A) All those debarred from inheritance are to be maintained, except the *Outcast* and the *Outcast's Son*; '*Liṅgī*'—the Wandering Mendicant, etc.—The term 'Outcast' includes the *Outcast's Son* also, as the latter also is an Outcast by reason of being born of the Outcast—(*Dāyabhāga*, p. 102).

'*Liṅgī*'—the Wandering Mendicant, etc.—The term 'Outcast' includes the *Outcast's Son* also, as he also is an 'Outcast' by reason of having been born of an Outcast—(*Vīramitrodaya*, p. 711).

'*Jaḍa*'—one who has no enthusiasm for the performance of religious duties.—'*Andhaḥ*'—the congenitally blind.—'*Liṅgī*'—one who has assumed the guise of an Ascetic—(*Smṛtitattva* II, p. 172).

'*Liṅgī*'—one who is wearing a forbidden sign—(*Vyavahāramayūkha*, p. 165).

'*Death*' is mentioned only by way of illustration.—'*Liṅgī*'—a religious hypocrite —(*Vibhāgasāra* 6.1–3).

Vashiṣṭha (17.52)—

[927] 'Those who have entered other Life-stages have no shares.'

'*Other Life-stages*'—i.e. *other* than the *Householdership.**

Kātyāyana—

[928] '(*a*) The Son of a woman married in contravention of the sanctioned order, (*b*) the Son born to a man of a Wife belonging to the same *gotra* as himself, and (*c*) the Apostate from Renunciation,—none of these is entitled to inheritance.'

(*a*) Marriage within one's own caste is what is sanctioned by the Scriptures; a woman in contravention of this is 'one married in contravention of the sanctioned order'.—(*b*) Even one married in accordance with the sanctioned order may belong to the same *gotra* as the Husband; the Son born of such a woman.—(*c*) One who having taken to Renunciation has fallen off from it.—All these are not entitled to inheritance.†

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* '*Other*'—i.e. other than that of the Householder (*Aparārka*, p. 750; also *Vibhāgasāra* 6.1–3 and *Vivādaratnakāra*, p. 208).

This text means that persons in other Life-stages have no connection with property—(*Mitākṣarā*, pp. 823-824).

'*Other Life-stages*'—i.e. the Life-long Student, the Hermit and the Wandering Mendicant—(*Madanapārijāta*, p. 682).

What is meant is that the man in one Life-stage cannot inherit the property of a person in another Life-stage; it is not meant that people in the same Life-stage shall not inherit each other's property—(*Parāsharamādhava*, p. 365).

† '*Akramoḍhāsutaḥ*'—the Son born of a woman married in contravention of the order of castes and of the order of birth; and the Son of a woman born from a Husband who is of the same *gotra* as herself;—these are not entitled to inherit property. And the reason for this lies in the prohibition contained in these texts, and not to the fact of their being not entitled to perform religious acts; because there can be no ground for this latter idea—(*Aparārka*, p. 750).

(*a*) The term '*akramoḍhāsutaḥ*' stands for the Son born to a man from a Wife of a caste different from his own,—who has been married to him in contravention of the laws regulating the order in which inter-caste marriages may be performed. That the Son of a different caste is meant is clear from the fact that in another text, *Kātyāyana* has declared the Son born of a Wife of the same caste to be entitled to inheritance.—(*b*) The Son born to a man from a married Wife belonging to the same *gotra* as himself. (*c*) '*Pravrajyāvasitaḥ*'—the man who, after having become a Renunciate, has fallen off from the observance of the vows of Renunciation.—These three are not entitled to inheritance—(*Vivādaratnākara*, p. 492).

The Son born of a woman married in contravention of the sanctioned order of caste and of birth;—and the Son of a man from a Wife belonging to the same *gotra* as himself;—and the man who, after having entered the fourth Life-stage, has renounced its vows.—None of these is entitled to inheritance—(*Smṛtichandrikā*, p. 630).

'*Akramoḍhāsutaḥ*'—the Son born of a woman married in the inverse order.—'*Pravrajyāvasitaḥ*'—one who has fallen off from Renunciation—(*Vivādachandra* 21.1–5).

If one marries a woman of a lower caste before marrying one of the same caste,—both these women would be 'married in contravention of the sanctioned order';—if to such a woman, a Son is born from a man of the same *gotra* as herself, who has been 'appointed' to beget a Son on them,—such a *Kṣētraja* Son would not be entitled to inheritance—(*Dāyabhāga*, p. 103, also *Vīramitrodaya*, p. 712).

Some people have explained the term '*akramoḍdhāsutaḥ*' as standing for the *Kṣētraja* and the *Kānīna* Sons.—If a younger Sister has been married before the elder Sister is married, both of these would be '*akramoḍhā*'; this is the right explanation of the term—(*Vyavahāramayūkha*, p. 164).

'*Akramoḍhāsutaḥ*'—The Son born of a Wife married in a form other than that which is sanctioned for the person concerned. Those not entitled to inherit may be thus summed up:—(1) One addicted to evil deeds, (2) Outcast, (3) Impotent, (4) Stricken by an incurable disease, (5) Blind, (6) Deaf, (7) Mad, (8) Idiot,

With reference to the *first* of those mentioned in the preceding text *Kātyāyana* makes a distinction—

[929] 'The *Son born of a woman married in contravention of the sanctioned order*, however, does obtain the property if he is of the same caste as his Father.'

That is, the Son, even though born of a woman married in contravention of the sanctioned order, *is* entitled to share in the property, if he belongs to the same caste as his Father.

The upshot of all this is as follows:—The following are not entitled to share the inheritance—(1) One who is addicted to evil deeds, (2) One who has been excommunicated on account of a very heinous offence, (3) the Outcast, (4) the Impotent, (5) one who is incapable of performing religious acts, (6) Blind, (7) Deaf, (8) Insane, (9) Idiot, (10) Dumb, (11) Deprived of hands and feet, (12) Leprous, (13) Hostile to the Father, (14) Consumptive, (15) Religious Hypocrite, (16) One who has entered another Life-stage.—The Sons of these,—except that of the *Outcast*—if themselves free from the disabling defects,—are entitled to shares in the property.

SECTION (D)—THE SACRAMANTAL RITES OF THOSE FOR WHOM THEY HAVE NOT BEEN PERFORMED

On this subject says *Vyāsa*—

[930] 'Those Brothers and Sisters whose Sacramental Rites have not been performed should have those Rites performed in the proper manner, by their elder Brothers, out of the paternal property.' *

Nārada—[*This text is the same as No.* 907 *above.*]

[931] 'In case there is no paternal property, those Brothers who have already had their Sacramental Rites performed must perform the same for their Brothers, taking what is necessary out of their own shares.'

[For notes, see under Text No. 907 above.]
Yājñavalkya (2.124)—

[932] '(A) Those Brothers who have not had their Sacramental Rites already performed shall have these performed by the Brothers for whom those Rites have been already performed.—(B) So also the Sisters, after they have been given the fourth part of a share.' †

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(9) Dumb, (10) Devoid of hands and feet, (11) Leprous, (12) Hostile to Father, (13) Consumptive, (14) Religious Hypocrite, (15) One who has entered another Life-stage.—The Sons of these persons, if born before the appearance of these disabilities, and if free from these disabilities themselves, are entitled to inheritance—(*Vibhāgasāra* 6.1–4).

* The 'Sacramental Rites' for the girls would be their *Marriage*—(*Vivādaratnākara*, p. 493).

In cases where the property is being divided after the Father's death,—if there are Brothers and Sisters whose Sacramental Rites have not been performed,—those Rites should be performed by their elder Brothers—(*Parāsharamādhava*, p. 344).

The Rites shall be performed out of the joint property—(*Vīramitrodaya*, p. 580).

This text lays down the necessity of performing the Sacramental Rites of Brothers and Sisters—(*Dāyanirṇaya* 21.2–4).

† The 'Sacramental Rite' stands here for *marriage*; the marriage of the unmarried Brothers shall be performed by the Brothers already married; or they shall set aside

Manu (9.118)—

[933] 'From among the Brothers, each, out of his own share, shall severally give the fourth part to the unmarried girls; those not inclined to give this become degraded.'

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wealth adequate for their marriage and divide the balance. It is from this that we learn that marriage should be performed with the joint property, for Brothers as well as Sisters.—In places where the property is not small, the Brothers shall divide it equally among themselves, after having set aside the fourth part of their share for the Sister—(*Vishvarūpa*).

Those younger Brothers whose Sacramental Rites—the *Jātakarma* and the rest—have not been performed by the Father,—for them, these Rites shall be performed by the elder Brothers for whom they have been already performed.—As for the Sisters who have not been already married, each of them shall be given away in marriage by the Brothers, after these latter have given to each of the Sisters the fourth part of the share that may have come to each of them—(*Aparārka*).

On the Father's death, if there are some Brothers for whom the Sacramental Rites have not been performed,—these shall be performed for them, out of the joint property, by the Brothers, when they are going to divide it after their Father's death.—As regards the Sisters, those that have not had their Sacramental Rites performed shall have these performed by their Brothers,—who should have given to them the fourth part of their share. From this it follows that after the Father's death, the Daughters also are entitled to a share in the inheritance.—'*Nijāt aṁshāt*', 'out of their share';—this phrase does not mean that each Brother is to take out a fourth part from his share and give it to the Sister; what is meant is that the girl should receive the fourth part of the share that has been ordained for a Son of the same caste as the Sister concerned. That is to say, if the girl belongs to the *Brāhmaṇa* caste, she is to receive the fourth part of the share that would go to a Son of the *Brahmaṇa* Wife. For instance, (*a*) if a *Brāhmaṇa* has only one Wife, and she belongs to the *Brāhmaṇa* caste, and she has one Son and one Daughter,—the entire paternal property shall be divided into two parts; one of these two parts shall be divided into four parts, and one of these four parts shall be given to the Daughter and the rest to the Son;—(*b*) if there are two Sons and one Daughter, the entire property shall be divided into three parts; one of these three parts shall be divided into four parts, and one of these four parts shall be given to the Daughter and the rest shall be divided equally between the two Sons;—(*c*) if there are one Son and two Daughters, the property shall be divided into three parts; one of these three parts shall be divided into four parts; two of these four parts shall be given to the Daughters, one to each, and the rest shall go to the Son; and so on, when an equal number or unequal number of Brothers and Sisters belong to the same caste;—(*d*) in a case however, where the *Brāhmaṇa* has one Son from his *Brāhmaṇa* Wife, and one Daughter from his *Kṣattriya* Wife, the property shall be divided into seven parts; three of these seven parts that are ordained for the *Kṣattriya* Son shall be divided into four parts, and one of these four parts shall be given to the *Kṣattriya* Daughter and the rest shall be taken by the *Brāhmaṇa* Son;—(*e*) where there are two *Brāhmaṇa* Sons and one *Kṣattriya* Daughter, the property shall be divided into eleven parts; out of these eleven parts, the three parts ordained for a *Kṣattriya* Son shall be divided into four parts, and one of these four parts shall be given to the *Kṣattriya* Daughter and the rest divided between the two *Brāhmaṇa* Sons.—It cannot be right to hold the view that—'no significance attaches to the specifying of the *fourth* part, what is meant is that she shall receive enough for her marriage'. Because such a view would be contrary to *Manu* 9.118 which declares that—'each of the Brothers shall give to his Sisters the fourth part extracted from his share' (vide below Text No. 933)—(*Mitākṣarā*).

Out of the common property, the Brothers who have had their *Upanayana*, Marriage and other Sacramental Rites already performed shall perform these Rites for those Brothers for whom they have not been performed; the Sisters—unmarried ones—also should have the Rites performed for them by the Brothers; who shall give them the fourth part of the share that may be theirs, in accordance with their caste.—The first '*tu*' indicates that, in the case of the Brothers, there is no limitation regarding the amount to be spent; while the second '*tu*' indicates that in the case of the Sisters, there *is* to be such a limitation.—In case the 'fourth part' is not sufficient for the Sister's marriage, they shall give her as much as may be needed

'*Svēbhyaḥ*'—i.e. from among the Brothers.—Thus what is meant is that to each of the girls shall be given the fourth part out of the share of the Brother belonging to the same caste as the girl concerned.—No significance

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for it, in accordance with their means; such being the declaration of *Viṣṇu* (Text No. 934 below)—(*Vīramitrodaya-Ṭīkā*).

(A) The meaning is that the division of property shall be made only after all the Sacramental Rites ending with marriage have been performed for all those Borthers and Sisters for whom they may not have been performed.—(B) The meaning of the second line is as follows:—After having performed the Sacramental Rites of the Sisters, the Brothers shall give to them '*the fourth part*'—from where ?—'*out of their share*'; the '*nīja aṁsha*', 'own share', standing for the share that has been ordained under *Manu* 9.153 for the Sons of the various castes.—'Four shares for the *Brāhmaṇa*, three for the *Kṣattriya*, two for the *Vaishya* and one for the *Shūdra*'; and it is the fourth part of this share that is meant.—[Here follows the scheme of division on the same lines as in *Mitākṣarā*.]—In a case where a *Brāhmaṇa* has four Wives of the four castes,—and the *Brāhmaṇa* Wife has a Son and Daughter, so also the *Kṣattriya* Wife, the *Vaishya* Wife and the *Shūdra* Wife,—thus there being eight children, four male and four female,—according to *Manu* (9.153), the *Brāhmaṇa* is to have four shares, the *Kṣattriya* three and so on, there should be eight shares for the two *Brāhmaṇa* children, six for the two *Kṣattriya* children, four for the two *Vaishya* children and two for the the two *Shūdra* children; thus the property shall be divided into twenty shares, and to the *Brāhmaṇa* Daughter shall be given fourth part of the 'four parts' that have been ordained for the *Brāhmaṇa* Son,—to the *Kṣattriya* Daughter, the fourth part of the 'three parts' ordained for the *Kṣattriya* Son,—to the *Vaishya* Daughter, the fourth part of the 'two parts' ordained for the *Vaishya* Son,—and to the *Shūdra* Daughter, the fourth part of the 'one part' ordained for the *Shūdra* Son.—After these 'fourth' shares have been given away, the remaining property shall be pooled together, and out of this the Sons shall receive 4, 3, 2 and 1 shares respectively.—In cases where the number of Sons and Daughters is not equal, the property shall be divided into as many shares as there are individual children, on the basis of their castes,—in the proportion of 4, 3, 2, 1,—and each Daughter shall receive the fourth part of the share that has been ordained for a Son of the same caste as that Daughter, and the three quarters of that share that are left shall be pooled together and divided among the Brothers in the same proportion of 4 3, 2, 1. —Some people have held the following opinion on this point:—"Having set apart one-fourth for the Sister, her marriage shall be performed with that one-fourth; and not that her marriage shall be performed out of the common property and then the property divided".—This view has not been accepted by *Medhātithi*, nor by the Author of the *Mitākṣarā* and others; hence it should be rejected.—In fact, every case may be dealt with in accordance with the custom prevailing in the country concerned—(*Madanapārijāta*, pp. 648–650).

The Brother should give to each Sister the fourth part of what is his own share, and then perform their marriage—(*Smṛtichandrikā*, pp. 625-626).

After the Father's death, his Sons should perform, out of the common property, the Sacramental Rites for such of their Brothers as have not had their Rites already performed;—as regards the Sisters, those whose Sacramental Rites have not been performed shall be given the fourth part of the share ordained for a Son of the caste to which the Sister concerned belongs; and then their Sacramental Rites should be performed.—From this it follows that after the Father's death, the Daughters also are entitled to share his propery—(*Parāsharamādhava*, pp. 345-346).

Here *Yājñavalkya* has declared that the Daughters shall be married,—not that they are entitled to inheritance.—Hence the conclusion is that where the property is a large one, they shall give to the Sister just enough to enable her to become married, and not necessarily the 'fourth part of a share'.—This should be understood as applying to cases where there is an equal number of Sons and Daughters. In cases where the numbers are unequal, the result of existing on the 'fourth part of a share' being given would be to make the Sister extremely rich and the Sons very poor; which would be improper—(*Dāyabhāga*, pp. 69-70).

The construction is '*asamskṛtāḥ saṁskāryāḥ*';—those whose Rites have not been performed should have them performed by the Brothers—(*Vīramitrodaya*, p. 580).

Each of the Sisters shall receive the fourth part of the share that is ordained for a Son of the same caste as the Sister concerned;—and after that, she shall be married—(*Vyavahāramayūkha*, p. 106).

is meant to be attached to the 'fourth part'; all that is meant is that that much should be given which would be needed for her Sacramental Rite.—That such is the idea is clear from the following text of *Viṣṇu*—

[934] 'One should perform the Sacramental Rite of the unmarried girls, in accordance with his means.'—[' *Girls* '—i.e. Daughters and Sisters—says *Vivādachandra* 20.2–9).

The same view is held by the *Ratnākara* and others.*

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* The term '*Kanyā*' is, as a rule, used in the sense of the *unmarried* girl; in another *Smṛti* text, the term 'unmarried' is actually used. The share, therefore, that is here laid down should be taken as pertaining to the *unmarried Daughter.*——'*Of the same caste*' (which is what is meant by '*svābhyaḥ*', which is the reading adopted in some places);—each of the Brothers should give to the Sister of the same caste as himself the fourth part of his own share; that is to say, in a case where the Father has left several unmarried Daughters, the share allotted to each of them should be the fourth part of the portion of the Brother belonging to the same caste as herself. The upshot therefore comes to this that three parts of the property shall be taken by the Sons and the fourth part by the Daughters. . . . . According to some people, the only benefit to which the girl is entitled is that her marriage should be performed; such, they say, is the custom also.—But the direct assertion of the *Smṛti* is definitely more authoritative than custom; moreover the custom referred to is by no means universal.—Another view that has been held is that the girl shall receive just enough of the property to suffice for the performance of her marriage, and not definitely the *fourth part* of a share.—But this would make the rule indefinite; there being no definite rule as to what is required for the performance of a marriage.—Then again, we have *Yājñavalkya's* text (2.124) laying down that 'the Brothers who have had their Sacramental Rites performed should perform the same for the unmarried girls, *and* Sisters should receive from their Brothers the fourth part of their shares'.—The term '*bhrātaraḥ*', 'brothers', in the present text has been taken as standing for the *uterine* Brothers, as is indicated by the term '*pṛthak*', 'severally'.—But if that were so, then the girl that has no *uterine* Brother would have to go without a share in the property; nor could there be a chance for any dowry being provided for her.—It might be argued that her *Step-brother* would provide for her; but in the absence of such a rule, he may not do it.—In reality, the term 'brothers' is found to be used in the sense of *Sons of the same Father,* even those of several Mothers.—As regards the term '*pṛthak*', 'severally', in the text,—it has been added in order to guard against the possible interpretation that the fourth part of the share of a *single* Brother shall be divided among *all* the Sisters—(*Medhātithi*).

The Sons of the *Brāhmaṇa* Wife shall give to the Daughters of the *Brāhmaṇa* Wife,—and the Sons of the *Kṣattriya* Wife to her Daughters,—the fourth part of their respective shares. Even in cases where there are several Daughters, the division shall be on the basis of the said principle. In a case where there are several Brothers and only one Sister, all the Brothers shall set apart for her just enough to make up for her what would be equal to the fourth part of the share allotted to each Brother—(*Sarvajñanārāyaṇa*).

If there are four Brothers belonging respectively to the four castes,—and they have inherited the property in the proportion of 4, 3, 2, 1, as laid down by *Manu* (9.153),—each of them shall give the fourth part of his share to the unmarried Sister belonging to the same caste as himself. That is, each Brother shall give to his *uterine* Sister the fourth part of the property for the purpose of her marriage. If a girl has no *uterine* Brother of her own, she should have her marriage performed by her Step-brothers belonging to superior or inferior castes. . . . . In the event of the Brothers being not inclined to give the fourth part of their shares to the Sisters, they would 'become degraded'.—It follows from this that the fourth part of one's share is to be given by the Brothers to their *uterine* Sisters, also in cases where there are several Brothers and Sisters of the same caste, but born of different Mothers—(*Kullūka*).

This text lays down the rule governing cases where there are Daughters also.—The Brothers should give the fourth part of their share to their Sisters belonging to the same caste as themselves, for the purposes of their marriage. . . . . If there are three Brothers who have had three shares among them, each of those

SECTION (E)—WHAT IS PARTIBLE ?

[935] 'The property of the Grandfather, the property of the Father and whatever may have been the self-acquired by any one,—all this is divided at the partition among coparceners'—(*Kātyāyana*).

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shares is to be divided into four parts, and one of these parts is to go to the Sister. This refers to cases where there have been several Mothers—(*Rāghavānanda*).

Each of the divided Brothers shall give to each of the unmarried Sisters the fourth part of his share—(*Nandana*).

'*Degraded*'—i.e. not entitled to share in the property—(*Rāmachandra*).

The two words '*svābhyaḥ amshēbhyaḥ*' refer only to the Sons' shares; the Plural Number being used in reference to cases where there may be several girls.—'*Svāt svāt*'—this repetition is with reference to girls belonging to several castes. The sense is as follows:—In a case where a *Brāhmaṇa* has had Wives of all four castes, the Daughter of the *Brāhmaṇa* Wife shall receive the fourth part of the share that would go to the *Brāhmaṇa* Son, and so on. This 'fourth part', however, is not her 'Inheritance', '*Dāya*'—(*Aparārka*, p. 731).

What is meant is as follows:—The Brothers belonging to the four castes shall give to the Sisters of the same caste as themselves the fourth part of the share that would be allotted to themselves in accordance with *Manu* (9.153)—i.e. in the proportion of 4, 3, 2, 1. It is *not* meant that the Brother is to take out the fourth part from his own share and give it; what is meant is that to each Sister shall be given the fourth part of the share that has been assigned to a Son of the same caste.—It is not right to urge that—"No significance attaches to the specific mention of the *fourth part*, all that is meant is that just that amount of wealth shall be given as would suffice for the performance of the girl's marriage".—Because both *Manu* and *Yājñavalkya* specify the 'fourth share', and also declare that by not giving this *fourth part*, the Brothers would incur a grave sin.—Some people have argued that "if this rule were strictly followed, and the exact fourth part of a share were assigned to each Sister, then in cases where there would be several Brothers and only one Sister, the latter would receive a large property; while in a case where there would be only one Brother and several Sisters, the Son would have nothing left for himself".—But no such contingency could arise under the rule as explained above; where we have shown that it is not meant that the Brother shall give the fourth part of the portion that has been assigned to himself; so that there would be no such contingencies as have been urged.—For these reasons, the right explanation is that given by *Asahāya*, *Medhātithi* and others, and not the one given by *Bhāruchi*.—Thus we conclude that after the Father's death, the Daughter also is entitled to a share in the property; but in case the Father has already given to her some property she retains that (and no more is given to her—adds the *Bālambhaṭṭī*)—(*Mitākṣarā*, pp. 665–667).

The meaning of the text is *not* that 'the Brother shall take over fourth part of his own share and give it to his Sister';—but that 'to each girl shall be allotted the fourth part of the share that would go to a Son of the same caste'.—Thus the sense comes to be that, out of the given total of 'four shares' (that have been assigned to the *Brāhmaṇa* Son),—or the 'three shares' (that have been assigned to the *Kṣattriya* Son); and so forth,—the fourth part shall be given to the *Brāhmaṇa* or the *Kṣattriya* girl respectively.—Inasmuch as the 'fourth part of a share' is found specially mentioned in several texts, it is actually the 'fourth part' that shall be given; though the purpose of the gift is that her marriage may be performed.—This same view has been held by the *Kalpataru*, the *Mitākṣarā* and the *Prakāsha*.—But *Halāyudha* and others have held the view that the 'fourth part' is mentioned only by way of an illustration,—the sense is that that much shall be given as would suffice for her marriage.'—This is the right view; for whatever the 'fourth part' may be, it is absolutely essential that the girl should be married—(*Vivādaratnākara*, p. 494).

The clear meaning of the words as indicated by the repetition '*svāt-svāt*' is that 'the Brothers shall give to the girls as many *quarter-shares* as there may be *full-shares* of the Brothers'; but seeing that the text pertains to cases where there may be several girls, there is no such discrepancy as would be involved if a single Sister were to receive the fourth parts of the shares of all the Brothers. What is meant is that the *fourth part* of the entire property (constituting the shares of all the Brothers) is to be divided equally among the Sisters.—The text of *Viṣṇu* referring to the 'unmarried' girls refers to cases where there is only *one* Son and hence there

'*Self-acquired*'—i.e. with the help of the paternal property.*
Nārada—

[936] 'What is left after the discharge of the Father's liabilities, and the giving of what had been given away by the Father,—shall be divided by the Brothers; otherwise the Father would remain a Debtor.'

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is no question of *partition* at all. Or it may be taken as referring to cases where the Brothers are living together.—The term '*Kanyā*' stands here for all those children of the Father's as have not had their Sacramental Rites performed already —(*Smṛtichandrikā*, pp. 626-627).

Each of the Brothers belonging to the four castes shall give to each of the Sisters belonging to the same caste the fourth part of the share that has been assigned to the Sons of the several castes.—[Then follows the details of allotment on the lines of the *Mitākṣarā*.]—Such is the explanation given by *Medhātithi* and *Vijñanēshvara*. *Bhāruchi*, however, has explained the 'fourth part' as standing for 'such wealth as would be necessary for their marriage', and hence he does not accept the view that the unmarried Daughter is entitled to inheritance. This idea is approved of by the Author of the *Chandrikā* also—(*Parāsharamādhava*, pp. 345-346).

The use of the term '*pradadyuḥ*', 'should give', and the declaration that 'by not giving, the Brother incurs sin',—imply that the girl receives the said 'fourth part', not as a matter of *right*, but as a *gift*; because one *rightful claimant* does not 'give' a share to another *rightful claimant*—(*Dāyabhāga*, p. 69).

The text does *not* mean that 'every one of the Brothers is to take out the fourth part of his share and give that to each of the Sisters'.—If this were meant, then a Sister who had several Brothers would become extremely rich and the Brother who had several Sisters would be reduced to penury.—All that is meant is that the Sisters shall receive just enough to enable them to get married.—Such is the explanation given by *Ratnākara*, *Chintāmaṇi* and others; and support of this view they have put forward *Viṣṇu's* text regarding 'unmarried Daughters'.—This view, however, is not right; because according to both the *Smṛtis* (*Manu* and *Yājñavalkya*). the withholding of the *shares* from the Sisters would be iniquitous; and the sin incurred in not being inclined to give the *shares* has been spoken of as distinct from that incurred in not performing their marriage.—For these reasons, *Medhātithi*, *Mitākṣarā* and others have propounded the following explanation—[Then follows the scheme set forth in *Mitākṣarā*]—(*Vīramitrodaya*, pp. 581-582).

Towards the expenses of the marriage of their Sisters, each Brother shall contribute a quarter of his share, either out of the paternal property or out of his own self-acquired property.—'*Svābhyaḥ*'—i.e. out of the shares of the Brothers belonging to the same caste as the Sisters.—The mention of the 'Brothers' is only by way of illustration: it stands for any one who has inherited the property of the girls' Father; the performance of the marriage being something that the Father should have done: and also because the girl also has a share in the property—say some.—It is not necessary that each of the Brothers should surrender a quarter of his share; all that is meant is that 'necessary provision should be made for their marriage',—as declared by *Viṣṇu*.—According to some people, the 'fourth part' is to be given in cases where the property is a large one—(*Vibhāgasāra* 6.2.5, 11).

'*Fourth part*';—this stands for just that much which may be necessary for the marriage of the sister. This is clear from *Viṣṇu's* text—(*Dāyanirṇaya* 21.2–7).

* '*Self-acquired*'—with the help of the ancestral property. What is acquired without such help is not *partible*.—All the three kinds of property mentioned in the text are divided,—i.e. if there is no debt contracted by the Grandfather and others remaining unpaid; in case there *is* such debt, what is divided is, not the whole, but only what remains of it after clearing off the debt—(*Smṛtichandrikā*, p. 635).

'*Self-acquired*'—i.e. in a manner other than that which would make the property entirely and solely his own—(*Vivādaratnākara* p. 496).

'*Self-acquired*'—i.e. acquired by one, with the help of the Father's property—(*Vibhāgasāra* 7.1.1).

'*Yachchānyat*';—the cumulative particle '*cha*' is to be construed with '*svayam*'; the meaning being that—'what has been self-acquired *and also* what has been acquired, with the help of that self-acquired property, by others'; that is why the acquirer of the original property has a double share as laid down by *Vyāsa* (Text No. 898, above)—(*Dāyanirṇaya* 14.2.1).

Of the 'self-acquired property', only that is partible which may have been acquired with the help of the paternal property; what has not been so acquired

'*Pitṛdāya*'—Father's debts.—'*Dattam*', 'given away',—i.e. promised to be given.—The sense thus is that what remains after the discharge of all the liabilities of the Father is to be divided.*

SECTION (F)—WHAT IS IMPARTIBLE ?

Says *Manu* (9.206)—

[937] 'The gains of learning shall be the sole property of the man by whom they have been acquired; so also friendly presents, marriage-portion and presents in connection with priestly functions.'

'*Maitra*'—what has been obtained as a token of regard from a friend.—'*Audvāhika*', 'marriage-portion',—is going to be defined later on (Text No. 949)—'*Mādhuparkika*'—the worshipful offerings of vessels and other things, made in connection with the offering of the 'Honey-mixture'.

Presents of honour, in the shape of vessels and other things, given in connection with 'Honey-mixture' offered on occasions of Reception, etc.†

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being *impartible*.—Of all these three kinds of property what can be divided is only the balance that remains after the debts have been paid off—(*Parāsharamādhava*, p. 375).

* *Vibhāgasāra* (7.1–3) and *Dāyanirṇaya* (21.2-3) have the same notes as *Vivādachintāmaṇi*.

'*Pitṛdāya*—the property promised by the Father to other people.—The Author of the *Prakāsha* has read '*pītṛdāna*'; it makes no difference in the meaning—(*Vivādaratnākara*, p. 496).

What is meant is the necessity of paying the Father's debts,—not the *time* for partition—(*Dāyabhāga*, p. 25, and *Vīramitrodaya*, pp. 557-558).

'*Pitṛdāya*'—First *Shrāddhas*. *Gautama* says that 'they shall perform the *Shrāddha* jointly'—(*Aparārka*, p. 722; also *Smṛtichandrikā*, p. 616).

'*Pitṛdāyēbhyaḥ*'—from what has been given away or promised by the Father.—If they are unable to pay off the debt at the time, they should admit the debt to the creditor and promise to pay it as soon as they are able to do so—(*Smṛtitattva* II, p. 169).

'*Pitṛdāya*' is what has been promised by the Father—(*Vyavahāramayūkha*, p. 123).

† '*Vidyā*'—Teaching, etc.; as also proficiency in an art;—'*Maitram*'—presents received from friends;—'*audvāhikam*'—in the shape of Dowry and the like; this stands for all that is received from the Father in-law's house; others explain it as any presents that may be received in connection with one's marriage;—'*mādhuparkikam*',—as a consideration for priestly functions; though this also is included under '*vidyādhana*', 'gains of learning', yet it has been mentioned separately, because it is obtained by means of the special kind of work involved in the priestly functions at sacrifices—(*Medhātithi*).

'*Vidyādhanam*'—the property acquired by means of learning;—this refers to the case of Brothers;—'*maitram*', got from friends;—'*audvāhikam*', obtained from the Wife's relatives;—'*Mādhuparkikam*'—obtained in connection with the Honey-mixture and other offerings made to one by virtue of his having become an Accomplished Student—(*Sarvajñanārāyaṇa*).

Obtained by learning, friendship and marriage,—and what is obtained as a present at the time of the offering of the Honey-mixture;—'*tasyaiva bhavēt*'—shall be the sole property of, etc., etc.—This is an exception to the general rule laid down in *Manu* 9.204 regarding the younger Brothers being entitled to share in the property acquired by the eldest Brother after the death of the Father.—'*Vidyādhana*' has been defined by *Kātyāyana* (see Text No. 941 below);—in view of this definition, the explanation of the term '*mādhuparkikam*' as 'what has been obtained as consideration for priestly functions'—as provided by *Medhātithi* and *Govindarāja*—cannot be accepted; as this last would be included under '*Vidyādhana*'—(*Kullūka*).

What is stated here is that even though the Brothers may not be separated, what any one of them acquires by means of learning, etc. shall not be divided.

Manu (9.208) and *Viṣṇu* (18.42)—

[938] 'If any one of them acquires something by his own labour, without drawing on the patrimony,—that property having been acquired by his own effort, he need not give to others, unless he himself wishes it.'

'*Labour*'—i.e. service and the like.—'*Effort*'—Agriculture, etc.—All this is merely by way of illustration; what is meant is that whatever a man has himself acquired without drawing upon the joint property, is the exclusive property of the acquirer himself.*

There are seven kinds of '*Vidyādhana*' (see *Kātyāyana*, Text 941).—*Mādhuparkham*'—silver plates and other things received in connection with the Honey-mixture offering—(*Rāghavānanda*).

'*Vidyādhanam*'—What has been obtained by means of teaching and art.—'*Maitram*'—obtained from friends.—'*Audvāhikam*'—obtained at the time of marriage.—'*Mādhuparkikam*'—obtained at the time of the Honey-mixture offering—(*Nandana*).

What one has obtained by means of learning shall not be given to the coparceners—(*Aparārka*, p. 724).

'*Maitram*'—what is obtained from friends.—'*Mādhuparkikam*'—what is obtained as a present of honour at the time of the Honey-mixture offering.—'*Tasyaiva bhavēt*'—i.e. shall be impartible—(*Vivādaratnākara*, p. 499).

Presents of friendship shall not be divided—(*Vivādachandra* 21.1–9).

'*Maitram*'—received as present from a friend.—'*Mādhuparkikam*'—the presents received at reception on other occasions—(*Vibhāgasāra* 7.1–8).

* The sharing of the Gains of Learning having been already precluded by the previous text, the present text should be taken as laying down that one need not give what he himself acquires by Agriculture and other means—(*Medhātithi*).

'*Shramēṇa*'—by service involving much labour.—'*Svayamīhita*'—his own unaided effort.—'*Nākāmo dāturmarhati*',—he may give what little he wishes to give, and there is no need for equal division. In what has been acquired without labour, there is to be equal division—(*Sarvajñanārāyaṇa*).

Without any detriment to the patrimony, whatever one acquires by laborious work, in the shape of Agriculture and the like, has been acquired by the man's own effort; hence he need not give it to his Brothers—(*Kullūka*).

'*Anupaghnan*'—without drawing upon.—'*Īhitalabdham*'—acquired by learning—(*Rāghavānanda*).

'*Anupaghnan*'—not injuring, not drawing upon.—'*Shramēṇa*'—by Agriculture and such means.—All other cases, where equal division has been declared, are those in which all the Brothers have put forth some effort towards the acquisition; in the present case, the acquisition has been due entirely to the effort of one man; hence there is no inconsistency—(*Nandana*).

'*Anupaghnan*'—not spending.—'*Svayamīhitalabdha*'—acquired by his own effort.—(*Rāmachandra*).

'*Shrama*'—Labour, which stands here for Soldiering, Agriculture and the like.—'*Īhā*' is effort not involving labour.—[According to this, there would be two kinds of property mentioned in the text: (*a*) what is acquired by laborious work, and (*b*) what is acquired by one's own effort not involving much labour]—(*Aparārka*, p. 723).

'*Shramēṇa*'—by Service, Soldiering and the like. This text makes clear the sense of *Yājñavalkya* 2.118-119—(*Mitākṣarā*, pp. 633-634).

'*Shrama*'—Agriculture, etc.—The term '*pitṛ*' stands for *undivided coparceners* in general—(*Parāsharamādhava*, p. 373).

'*Shrama*'—Service, Soldiering and the like—(*Madanapārijāta*, p. 685).

In this text *Manu* has made clear the meaning of *Yajñavalkya's* Text 2.118.—The term '*pitṛ*' stands for *undivided coparceners* in general.—'*Shramēṇa*'—Agriculture and such other means involving labour.—'*Anupaghnan*'—without causing injury to—(*Smṛtichandrikā*, pp. 641-642).

What has been acquired without drawing upon the paternal property has been declared by *Manu* and *Viṣṇu* to be impartible. Since the patrimony has not been drawn upon, the other coparceners have rendered no monetary help in the acquiring of the property; and as it has been acquired entirely by the man's own effort and labour, the others have not helped with bodily labour either; hence

Vyāsa—

[939] 'What has been given to one through affection, by the Grandfather, the Father or the Mother, shall not be taken by others.'

Again—

[940] 'If one has acquired property by his own power, without recourse to the paternal property,—he shall not give that to his coparceners; so also what may have been acquired by learning.'

That is, (*a*) what has been acquired without drawing upon the joint property, and (*b*) what has been acquired by means of learning,—both of these are impartible.*

The opinion of the *Prakāsha* is that—"In the case of the Gains of Learning also, only that is impartible which has been acquired without drawing upon the joint property".

This, however, cannot be right; as in that case, the mention of both would be useless.—Such is the opinion of the *Ratnākara* and others also.

The following might be urged:—"In accordance with the following text of *Nārada's*—

[941] 'A *learned* man may not give, against his will, a share in his self-acquired property, to the *unlearned* coparcener,—if it has been acquired without drawing upon the paternal property'—

it follows that even the property acquired by learning is *partible* if it has been acquired with the help of the paternal property."

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what has been acquired must be the exclusive property of the person who has acquired it.—'*Svayamīhitalabdham*',—this phrase states the ground for the property acquired belonging to the acquirer only (p. 105).—'*Anupaghnan*' should qualify '*vidyādhana*' also; because it has been declared that, if the acquiring of learning has involved expenditure out of the patrimony, the gains of that learning have to be divided—(*Dāyabhāga*, p. 113).

'*Shramēṇa*'—by Service and such means—(*Vīramitrodaya*, p. 708).

'*Shrama*' stands for *Service* and such other means.—'*Ihita*' is Agriculture and the like. All this is merely illustrative; what is meant is that when a man has acquired something without the help of the joint property, it belongs to him absolutely—(*Vibhāgasāra* 9.1–8).

'*Labour*'—Service and the like.—'*By his own effort*'—e.g. Agriculture—(*Dāyanirṇaya* 14.2–5).

* The meaning is that if the learning by means of which the property has been acquired with the help of the joint property has itself been acquired with the help of the joint property, then that property shall be partible; but in case the joint property has not been used in the acquiring of learning, then the gains of that learning shall not be partible—(*Vibhāgasāra* 7.1-11).

'*Anāshṛtya*'—without having recourse to—for the purpose of acquiring.—The term '*pitṛ*' stands for undivided coparceners in general—(*Smṛtichandrikā*, p. 642).

As the text has used the general term 'by his own powers', it follows that all kinds of property that have been acquired 'by one's own energy' are the exclusive property of the acquirer himself; so that all that has been acquired with the help of one's own self-acquired property, or by his own labour, is also his own exclusive property, and cannot be shared by the Brothers. Inasmuch as even the Gains of Learning that have been acquired 'by one's own power' have been held to be such as have to be shared with those Brothers who happen to be either superior or equal to the acquirer in learning,—all that the addition of 'what has been acquired by learning' in the present text can mean is the exclusion of such Brothers as are either inferior to the acquirer in learning, or entirely without learning—(p. 106).—All that such texts mean is that 'one must share with his coparceners all that property which one may have acquired with the help of the common property'; the meaning of 'Valour' ('Learning') and the rest is meant to be only illustrative; hence there can be no authority for the view that "a property is *common* simply because it has been acquired by a member of the joint family"—(*Dāyabhāga*, pp. 114-115).

True; but this would be so in those cases where the joint property has been drawn upon both in the acquiring of learning and the acquiring of the property.*

It is for this same reason that *Kātyāyana* has declared *impartibility* on the basis of *being acquired without help of the joint property*—

[942] 'Where a man has acquired learning from others while living upon food supplied by others,—whatever is obtained by him by means of that learning is called *Gains of Learning*.' †

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* What is meant is as follows:—(*a*) If the man who has acquired learning while maintaining himself with food and clothing supplied out of the joint property, acquires wealth *without* drawing upon the joint property,—then he may not give any share out of it to his *unlearned* coparcener;—(*b*) if the said property has been acquired with the help of the joint property, then a share in it has to be given to the unlearned coparcerner also;—(*c*) if the joint property has not been drawn upon during the time of the acquiring of learning, then no share need be given to any one else,—even though at the time of the acquiring of new property itself, the joint property may have been used; in this case it belongs entirely to the learned acquirer himself. This follows from the fact that *Vyāsa* also, having declared the impartibility of what has been acquired by a coparcener without help of the joint property, has added the 'Gains of Learning' separately, as not to be divided. It is for this reason that the impartibility the Gains of Learning has to be taken as referring to that case where the learning has been acquired by the man with the help of his own private property, though at the time of the acquiring of the property the joint property may have been used.—Such is the opinion of *Halāyudha* also.—The Author of the *Prakāsha* and others, however, have explained all those texts that declare the 'Gains of Learning' to be impartible as pertaining to cases where the paternal property has not been drawn upon at all.—But this is not right; as, in that case, there would be no sense in the mention of both—(*Vivādaratnākara*, pp. 500-501).

The meaning is that the learned man is not to give a share against his will. The property mentioned in the first line is to be understood as that property acquired by learning which is *impartible*—(*Smṛtichandrikā*, p. 641).

This refers to cases where the acquirer is unwilling to give a share—(*Parāsharamādhava*, p. 378).

The implication of this text is that the division is to be equal between two *learned* coparceners, even though the amounts of wealth acquired by them severally may be unequal—(*Vivādachandra* 21.2-10).

This negation of partibility is meant for those cases where the Brothers have other property. If they have no other property, then a share has to be given to them also; so says *Madana*—(*Vyavahāramayūkha*, p. 127).

'*Pitṛyam dravyam*' stands for *joint property*.—If the Gains of Learning have not been acquired with the help of the joint property, then the *learned* may not give it to the *unlearned*; but to the *learned*, he must give it,—even when it has been acquired without the help of the joint property—(*Dāyabhāga*, p. 108).

The implication is that, if the Gains of Learning have been mixed up with the other property, then it has to be given; and if a coparcener, even though learned, has not earned anything,—he also should not be allowed to share in the Gains of Learning of another—(*Vibhāgasāra* 7.1–7).

The law on this point is briefly this:—Where the property concerned has been acquired by a coparcener with the help of the ancestral property, through Soldiering, Trade and such other means, or by Learning,—that property shall be divided equally among the Brothers; the acquirer himself receiving a *double share*—(*Dāyanirṇaya*, 14.2.6).

† '*Bhakta*'—food.—'*Anyataḥ*'—from a person other than the Father—(*Aparārka*, p. 724).

In this text *Kātyāyana* provides the definition of that 'Gains of Learning' which is impartible—(*Mitākṣarā*, p. 632; also *Vīramitrodaya*, p. 708)—'*Parabhaktopayogena*'—by living on food given by persons other than the Father, etc.—'*Anyataḥ*'—from persons other than the Father and others. Thus the meaning is that 'that Gain of Learning is impartible which has been obtained by means of that learning which has been acquired without drawing upon the paternal property'—(*Bālambhaṭṭī*).

[943] 'If property has been acquired by persons who have learnt the sciences in the family, from the Father or the Brothers,—as also the property acquired through valour,—has been declared by *Bṛhaspati* to be partible.'

The term '*Vidyā*', 'Sciences', stands for the Science of Weapons and the Science of Scriptures.—Thus what is meant is that—if a man has learnt the Sciences of Weapons and the Scriptures from his Father and other Agnates,—and by that learning he acquires some property,—in that property his other Brothers also are to receive shares.*

[*Kātyāyana's* definition of *Vidyādhana*, 'Gains of Learning']—

[944] '(A) What one has acquired through his learning on the occasion of a difficult problem being propounded for discussion, with a wager,—is called the *Gains of Learning*; this is not divided at partition.—(B) What is obtained from a Pupil, or from officiating at sacrifices, or from the propounding of a problem, or from the solution of a difficult problem, or from the display of one's knowledge, or from disputation, or from one's superior scholarship,—is called *Gains of Learning*; and this is not divided at partition.—This same law holds also in the case of Artists;

The terms '*para*' and '*anya*' stand here for persons other than the members of the particular joint family.—The term '*bhakta*' stands for things in general. In the acquisition of property by learning, the means and methods are of various kinds, and the property acquired would also be of various kinds. All this is impartible—(*Smṛtichandrikā*, p. 636).

The 'Gains of Learning' meant to be impartible are those obtained by that Learning which has been acquired without drawing upon the family-property; hence what has been obtained by learning acquired with the help of food, etc. supplied by the family is to be divided—(*Vivādachandra* 21.2.1-2).

'*Anyataḥ*'—from persons other than those belonging to one's own paternal and maternal families—(*Smṛtitattva* II, p. 174).

In a case where learning has been acquired with the help of the joint property, the Gains of Learning shall be divided; but in a case where no help has been taken from the joint property, the gains shall not be divided. That is to say, when the property in question has been acquired by learning which has been acquired by the man from a stranger and while he was living on food supplied by a stranger,—then it may not be divided; but if, in course of his education, the man has lived on food supplied by the joint family, and has learnt the sciences from his Father and other relatives, then the property shall be divided. The 'Learning', '*Vīdyā*', meant here is the Knowledge of Weapons and the Sciences.—The 'Gains of Learning' have been defined in detail by *Kātyāyana* himself (see below Text No. 944). What is meant by this being 'impartible' is that it can be partitioned only if the acquirer wishes, not otherwise—(*Vibhāgasāra* 7.2-3).

'From others'—i.e. from persons other than the Father and the Uncle. If such learning has been acquired without drawing upon the patrimony, it should be shared with such Brothers as are superior or equal to the acquirer in that learning —(*Dāyanirṇaya* 15.1–3).

* The meaning is that in a joint family, if some members have acquired learning with the help of the Father's property, or with the help of the Father—any property that they may acquire through valour, etc.—i.e. by that learning,—is 'Gain of Learning' and it shall be partible—(*Smṛtichandrikā*, pp. 638-639).

Those Brothers who have acquired learning 'in the family'—from their Grandfather, Uncle and others—or from the Father himself,—among them, if there is any property that has been acquired through that Learning, Valour and the like, it should be divided among the Brothers—(*Vivādaratnākara*, p. 507; also *Parāsharamādhava*, p. 378).

The 'learning' meant here is *not* that of the *Sciences*, but the act of *Valour*, which one displays under dangerous circumstances—(*Vivādachandra* 21.2-3).

Among Brothers who have acquired learning in the family itself, etc., etc. (*Vivādaratnākara* named and reproduced)—such is the opinion of the *Kalpataru* also—(*Smṛtitattva* II, p. 174).

whatever is obtained as *prize* in addition to the actual price of the manufactured article,—and also what is obtained by the assertion of one's skill,—is called *Gains of Learning*;—so says *Bhṛgu*.'

'*From officiating at sacrifices*'—i.e. what is given at the 'Appointment' and after the performance (as *Fee*).—'*Prashnāt*'—from the man himself propounding of a difficult problem (of which no one is able to suggest a solution).—'*Prādhyayana*'—superior and extensive scholarship.

What is acquired by Art is to be treated like what is acquired by learning. When the Vendor has sold something to a person at a small price, if the Vendee obtains for the article a higher price, the excess thus obtained will be his exclusive property.—'*Assumption of one's skill*'—in the words 'I am the only person who knows this science' and so forth. *

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* '*Prādhyayana*'—superior scholarship.—(C) '*Mūlyād yachchādhikam bhavēt*'—that excess over the proper price which is obtained by reason of the increase in the number of buyers, belongs to the Artist exclusively.—'*Vidyāpratijña*'—the assertion 'I alone know this science'—(*Vivādaratnākara*, p. 503).

Here *Kātyāyana* provides the definition of that 'Gains of Learning' which is impartible.—The sense is that what is other than this is the common property of all undivided coparceners—(*Parāsharamādhava*, p. 378).

'*Upanyastē*'—in what is propounded as a problem.—'*Shiṣyāt*'—by teaching.—'*Ārtvijyāt*'—by officiating at sacrifices.—'*Prashnāt*'—by propounding questions, regarding the proper expiation of minor sins and so forth.—'*Sandigdha prashna-nirṇayāt*'—by deciding the questions and cross-questions propounded by plaintiffs and defendants.—'*Svajñānashaṁsanāt*'—exhibiting one's learning on public occasions.—'*Vādāt*'—by discussions, wranglings and the like.—'*Prādhyayanāt*'—Reciting by the time.—'*Vidyātaḥ*'—by such knowledge as that pertaining to Dice, etc.—'*Vidyāpratijñā*'—by asserting one's superior scholarship.—(C) '*Shilpiṣu*'—among people who make a living by the Arts also.—'*Dharmaḥ*'—the same law holds regarding the partition of Gains of Learning.—'*Mūlyād yad adhikam*'—the excess of wealth that is obtained as salary for carrying on teaching work....... This is what has been called 'Gains of Learning', which forms one's exclusive property. Thus only that property is common to all undivided coparceners which has been acquired with the help of the ancestral property, and which is not the 'Gains of Learning'—(*Smṛtichandrikā*, pp. 637-638).

'*Upanyastē*'.—'If you are able to put forward a *Bhadraka* I pay you so much',—on being thus challenged, if one answers it successfully and thus wins the wager. '*Shiṣyāt*'—from the pupil whom one has taught.—'*Ārtvijyataḥ*'—from the person for whom one has officiated at a sacrifice; what one has obtained as the Sacrificial Fee and such presents.—The Sacrificial Fee is not a *gift*, being payment for work done.—Also what one has earned as a reward, by solving problems propounded in literary debates, even without wagers; for example, some one asserts—'In this debate if any one answers my questions I shall give him the gold'; if some one answers the questions and removes all doubts on the point, he obtains the gold;—or when two disputants have approached a person for the purpose of settling their dispute, and he settles it to their satisfaction and obtains his reward in the shape of the sixth part of the property under dispute and so forth.—Also what one obtains as a reward for giving an exhibition of his superior scholarship; so also when there is a scientific discussion on a subject between two persons and one of them wins and obtains a reward.—When from among several persons one comes forward as having acquired most excellent learning and obtains the consequent rewards.—Also what is obtained by painters and other artists;—and what is won at gambling.—All this is not partible.—The upshot is that by whatever learning or science one obtains property, that property belongs to the earner himself exclusively—(*Dāyabhāga*, pp. 123-124; *Smṛtitattva* II, p. 173).

'*Upanyāsa*'—is the reciting of all forms of Vedic recitation, *Krama*, *Jaṭā*, etc.—says the *Madanaratna*. Others explain it as 'the propounding of difficult problems in an Assembly'.—'*Paṇapūrvakam*' is an Adverb modifying '*upanyastē*'.—'*Shamsana*'—Exhibition.—'*Prādhyayanam*'—Superior Scholarship.—'*Shilpiṣvapi*'—the law relating to the Gains of Learning is applicable to the case of artists also.—'*Mūlyād yad adhikam*'—by way of reward.—In all these, if there has been no drawing upon ancestral property,—either in the acquiring of the learning or in the acquiring of wealth by means of that learning,—then alone is such property

Kātyāyana—

[945] 'In no case shall the *wealth gained by learning* be given by the learned to the unlearned; that wealth shall be given by the learned to those who may be equal or superior to himself in learning.'

In this case, the possession of equal or superior learning is not what makes them the recipients of the gift of the shares in the property; as if it were so, it would have to be regarded as serving a transcendental purpose. All that is meant is the *unison*, pooling together, of what has been acquired through learning by the several coparceners.*

Kātyāyana—(*Nārada* 13.10)—

[946] 'If one Brother maintains the family of another Brother who is engaged in acquiring learning,—the former shall receive a share in the wealth acquired by the latter through that learning; though he himself may be illiterate.'

The law thus in brief is as follows:—When a man is being fed by others while he is being taught by others,—and his family is not being supported by his coparceners during the time that he is learning,—if through the Weapons and the Sciences thus learnt he earns property, even with the help of the common ancestral property,—such 'Gains of Learning' is *impartible*.

What sort of 'Gains of Valour' is impartible has been thus declared by *Manu* (?)—

[947] '(A) Having placed oneself in danger, when one does a daring act, in consequence whereof a favour is bestowed upon him by his master; what is obtained in this manner is *Obtained by Valour*.—

[948] '(B) What is *Obtained in Battle* has been declared to be impartible,—it being that wealth which one wins in battle, after having set to flight the armies of the enemy and endangering one's life for the sake of one's master.' †

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impartible; it is certainly *partible* if there has been drawing upon the ancestral property—(*Vyavahāramayūkha*, pp. 125-126).

There are several kinds of 'Gains of Learning'—(1) '*Ārtvijyataḥ*'—by officiating at sacrifices; (2) '*Prashnāt*'—by pleasing the rewarder by propounding problems;—(3) '*Ajñānashamsanāt*' (v.l. for '*jñānashamsanāt*')—by refuting ignorance; (4) '*Prādhyayanāt*'—by means of excellence of learning and so forth—(*Rāghavānanda* on *Manu* 9.206).

* '*In no case*'—i.e. even if the acquirer be willing to give it—(*Smṛtichandrikā*, p. 639; also *Parāsharamādhava*, p. 379).

The term '*vidyā*' (in the second line), occurring, as it does, between the terms '*sama*' and '*adhika*' is related to both these terms; the sense being that shares are to be given to those only who are either equal or superior to the earner of learning, —not to those who may be either inferior to him, or not possessed of any learning at all.—'*Vaidyēna*'—by the learned—(*Dāyabhāga*, p. 109; and *Smṛtitattva* II, p. 174).

To one of equal or superior learning, it is not to be given as a gift; the meaning is that the gains of the two persons shall be pooled together. If a man possessed of little wealth has acquired much wealth by means of his learning, he shall receive a larger share as being the acquirer—(*Vibhāgasāra*, 7.2–10).

This means that in a case where the additional property has been acquired through learning, without the help of the patrimony, the acquirer should give a share out of it to such of his coparceners as are either superior or equal to him in that learning.—'*Vaidyēna*'—by the learned—(*Dāyanirṇaya*, 14.2–8).

† This describes what sort of wealth *acquired by valour* is impartible—(*Vivādaratnākara*, p. 503).

(A) defines 'wealth acquired by valour'.—'*Prasabha*'—force.—(B) describes another kind of impartible property. This latter also has been included by *Vyāsa*

This same authority describes what sort of 'Marriage-gift', '*Audvāhika*', is impartible, and is the exclusive property of the person concerned—

[949] 'Whatever has been obtained at the time of marriage, along with the girl of his own caste, is the *Property obtained with the Girl,* which is pure and conducive to prosperity. Whatever has come along with the Wife is to be known as *Marriage-portion.*—All wealth of this kind is conducive to *Dharma*, Righteousness.' *

SECTION (G)—ALLOTMENT OF SHARES

Says *Manu* (9.205)—

[950] 'If all the Brothers are unlearned, and the property has been acquired by their labour,—the division shall be equal; the property being regarded as *non-ancestral.*'

'*Labour*'—such as Agriculture and the like.—'*Equal*'—i.e. not unequal.—'*Non-ancestral*'—hence not admitting of any Preferential Share and such inequalities. †

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under 'Wealth acquired by Valour'. *Kātyāyana* has mentioned it separately only for explaining things in greater detail. Here also what makes the property impartible is the fact that it has been acquired without the help of the joint property—(*Smṛtichandrikā*, pp. 639-640).

The term '*vidyādhana*' stands, not only for what has been acquired by *Learning*, but also what has been acquired in the manner described in three texts—(*Vivādachandra* 21.2–4).

Here *Kātyāyana* makes a distinction between '*Shauryadhana*', 'Gains of Valour' and '*Dhvajāhṛta*' 'Gains of Battle'. Other writers do not make this distinction—(*Vyavahāramayūkha*, Kane's Notes, p. 214).

* These texts supply the definition of '*Kanyāgata*' (Obtained with the Girl) and '*Vaivāhika*' (Marriage-portion)—(*Smṛtichandrikā*, pp. 640-641).

These texts describe that *Marriage-portion* which is not *joint* property—(*Vivādaratnākara*, p. 503).

The term '*vaivāhikam*', 'marriage-portion', does not stand for only that which is given to the man by his Father-in-law; it has a technical significance, which is explained in these texts—(*Vivādachandra* 21.2–5, 6).

'*Kanyāgatam*' is what has been obtained in marriage in the manner described in such rules as—'That is the *Ārṣa* form of marriage in which the bride's Father receives a pair of bullocks and so forth'—(*Yājñavalkya* 1.59).—Here also, the property in question would be impartible, like 'Gains of Learning', only if it involved no drawing upon the ancestral property—(*Vyavahāramayūkha*, p. 128).

'*Bhāryayā sahāgatam*'—obtained at the time of marriage—(*Dāyanirṇaya*, p. 126).

† '*Unlearned*'—i.e. devoted to Agriculture, Trade, Royal Service and so forth. In this case no attention is to be paid to the larger or smaller amount of property acquired by each of them severally. But even so, if one of them happen to acquire a *very large* property, that of course is not to be divided among others.—This text, in reality, is meant to be prohibitive of the Preferential Share of the eldest Brother.—If the difference in the properties acquired by them severally is small, then the division shall be equal.—'*The property regarded as non-ancestral*',—this clearly indicates that this same rule applies also to the case of childless persons—(*Medhātithi*).

In case all of them are unlearned, and have acquired wealth by going about here and there, without any detriment to the paternal property;—if the wealth has been acquired by Agriculture and other means, with the help of the paternal property;—then no Preferential Share is to be given to the eldest Brother. This is the meaning of the property being '*regarded as non-ancestral*'—(*Sarvajñanārāyaṇa*).

If any wealth has been acquired by all the Brothers, by means of Agriculture, etc., then this being the self-acquired property of the Brothers,—and not ancestral

In continuation of the term 'self-acquired property', *Gautama* (28.31) says—

[951] 'The unlearned one should divide equally.' *

And *Vashiṣṭha*—

[952] 'Among these, if any one has acquired something by himself, he should receive two shares in it.'

If from among several Brothers, any one acquires wealth with the help of the joint property, by means of Agriculture and other means,—he should receive two shares out of what he has earned and the others shall receive one share each.†

And *Vyāsa*—

[953] 'If any one of the Brothers, while depending upon the joint property, acquires, through valour and such other means, any such property as Conveyances and Weapons, ‡—the Brothers shall share that property; two shares out of it shall go to the acquirer and the remainder shall be divided equally among the rest.'

The term '*ādi*' ('and such other means') connotes *kind, method*; and the Bahuvrīhi compound '*shauryādi*' connotes methods of the same character as the one mentioned,—i.e. any particular method which is specially conducive to the same end; hence 'Learning' also becomes included.

The following objection may be urged:—"It has been declared before that whatever has been acquired through Learning, Valour and the like, even with the help of the joint property, is impartible; and what is said in the present text goes directly against that".

—it shall be divided equally among them; as in what is *non-ancestral*, the eldest Brother shall not receive a Preferential Share—(*Kullūka*).

If the Brothers are devoid of learning, and yet make an effort to acquire wealth,—the division of this wealth shall be equal, in all properties *not-ancestral*; in the case of the latter, the division being *unequal*, as there is a Preferential Share for the eldest Brother.—'*Apitryē*'—apart from the ancestral property, in which there is Preferential Share.—The sense is that those who have no learning and have made no effort in the acquiring of the wealth, shall have no share in the wealth—(*Rāghavānanda*).

'*Īhātaḥ*'—by such efforts as Agriculture and the like; when every one has worked according to his capacity,—every one is entitled to share in the property.—'*Apitryē*—i.e. in the case of division not being made by the Father; in the case of division made by the Father, *unequal* division has been permitted—(*Nandana*).

When all the Brothers are unlearned, and acquire wealth by Agriculture and other means,—in this property, which is *not-ancestral*, the division shall be *equal*, and no one shall receive a Preferential Share by reason of his having acquired a larger amount than the others—(*Vivādaratnākara*, p. 508).

Even when there is no ancestral property, if the unlearned Brothers have acquired varying amounts of wealth, the division shall be equal, and one who may have acquired a larger amount shall *not* receive a larger share—(*Vivādachandra* 21.2.9).

'*Īhā*'—Agriculture and other efforts.—'*Apitryē*'—without the help of the ancestral property—(*Vyavahāramayūkha*, p. 128).

'*Īhā*'—Agriculture, etc.—There is to be no Preferential Share, such as the *twentieth part* and the like,—in this case—(*Vibhāgasāra*, 9.1–10).

* '*Unlearned*'—i.e. not possessed of any such learning as would make the acquisition such as should belong exclusively to the acquirer alone—(*Vivādaratnākara*, p. 508).

† For *notes*, see under Text No. 899, where the same text has been quoted.

‡ In this text as quoted above (No. 898) the reading is '*vāhanādikam*' for '*vāhanāyudham*'.

Answer.—Not so, because what was said before was with reference to the 'Gains of Learning' and 'Gains of Valour', etc. in the technical sense assigned to these terms by *Kātyāyana* and others (Text Nos. 944, 647); while what is said in the present context is in reference to the effects of learning of kinds other than those contemplated by the technical definitions.*

SECTION (H)—STRĪDHANA

Before proceeding to deal with the partition of '*Strīdhana*' (Woman's Property),—we set forth the definition of '*Strīdhana*'.

In regard to the detailed connotation of the term '*Strīdhana*', *Manu* (9.194) and *Kātyāyana* declare as follows:—

[954] '(1) *What is given before the Fire,* (2) *What is given at the time of Departure,* (3) *What is given in token of Love,* (4) *What is given by the Mother,* (5) *What is given by the Brother, and* (6) *What is given by the Father,*—'*Strīdhana*' has been declared to be of these six kinds.'

'*Six kinds*'—What is meant is that the number is *not less than six.*†

The first three of these have been thus defined by *Kātyāyana*—

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* For notes, see under Text No. 898 above.

† (1) '*Adhyagni*'—what is obtained from any person at the time of the Marriage —*Homa*;—(2) the customary presents received at the time of going to the Husband's house;—(3) what is given by the Husband at the time of dalliance,—all this is *Strīdhana*; that also is *Strīdhana* which the Woman receives from her Mother and other relatives—(*Sarvajñanārāyaṇa*).

(1) The term '*adhyagni*' is an Indeclinable.—What is given to the Girl at the time of Marriage, near the Fire, by her Father and others is called the *Adhyagni Strīdhana,* as defined by *Kātyāyana.*—(2) What is obtained by the Girl when she is being taken to the Husband's house is called the *Adhyāvāhanīka,* as defined by *Kātyāyana.*—(3) What is given by the Husband on occasions of love-making.—(4), (5) and (6)—Whatever is given on subsequent occasions by the Mother, Brother and Father.—These are the six kinds of *Strīdhana*—(*Kullūka*).

(3) What is given by the Husband at the time of dalliance and on festive occasions—(*Rāghavānanda*).

(1) '*Adhyagni*' is what is received by the Girl from any person, near the nuptial Fire.—(2) '*Adhyāvāhana*' is *going from the Father's to the Husband's house,*—what is obtained at the time of this *going* is '*Adhyāvābanika*'.—(3) What is given by the Husband's parents in token of affection at the time that the Girl bows down to them;—the meaning is that these six kinds of property are the *Woman's own,* whatever else she acquires later on belongs to her Husband—(*Nandana*).

What *Manu* means by speaking of the 'six kinds' is that the number of the varieties cannot be less than *six,* it does not mean that it cannot be more. These have been defined by *Kātyāyana*—(*Mitākṣarā,* p. 843).

'*Adhyagni*'—what is given by any one at the time of Marriage.—'*Adhyāvāhanika*'—the presents that follow the Bride when she is being taken to the Bridegroom's house.—*Medhātithi* has described the *Adhyavāhanika* as what has been given to the Bride by her Father-in-law and others at the time of her being carried back to her Father's house from the Bridegroom's house; this also may be accepted; as it stands on the same footing as the preceding—'*Dattañchaprītitaḥ*'—what is given by her Father-in-law and other relations, through love aroused by her character, virtue and efficiency.—'*Six kinds*'—this is added for the purpose of precluding the possibility of there being *less,* not of excluding a larger number; as we find that there is yet a *seventh* kind of *Strīdhana,* the *Ādhivedanika,* mentioned by *Yājñavalkya*—(*Vivādaratnākara,* p. 522).

'*What is received from the Mother, etc., etc.*',—at any time during her life, for her maintenance—(*Smṛtichandrikā,* p. 652).

'*Adhyagni*'—what is given by any one at the time of Marriage.—'*Adhyāvāhanika*' —what is given at the time of the *Dvirāgamana* (Bride's going to the house of the

[955] 'What is given to Women at the time of Marriage, near the Fire, has been called by the Wise the *Adhyagni Strīdhana.*'

'*Is given*'—by any one; that this is meant is shown by the absence of any restrictive term.

[956] 'Whatever is obtained by the Woman at the time that she is being taken away from her Father's house has been called the *Adhyāvāhanika Strīdhana.*'

That is, whatever she receives from any person at the time of her *Dvirāgamana* (*Gaunā*) is her *Adhyavāhanika Strīdhana.*

Again—

[957] 'Whatever is given to the Woman, through love, by the Father-in-law or Mother-in-law, at the time of her bowing down to their feet is called the *Lāvaṇyārjita Strīdhana.*'

'*Lāvaṇya*', 'Charm', stands for modesty, efficiency and such other good qualities. The meaning is that at the time that the Bride bows down to the feet of the Father-in-law and other relatives,—and she is found to be possessed of modesty and other qualities,—they make presents to her,—and these presents constitute the *third* kind of *Strīdhana.*

The other three kinds—given by the Mother, Brother and Father,—are quite clear.*

The '*Ādhivedanika*' is the *seventh* kind of *Strīdhana,* as defined by *Yājñavalkya* (r. 148)—

[958] ' To the superseded Wife, one should give an equal amount as *Ādhivedanika* (Compensation for Supersession).'

When the Husband has married a second Wife, the first Wife becomes '*adhivinnā*', '*superseded*'; at the time of this supersession, her Husband makes a present to her (by way of Compensation); this is what is called the '*Ādhivedanika*' *Strīdhana.*†

Bridegroom),—also known as *Yautuka,* Dowry.—'*Prītidatta*'—what is given to the Bride by her Father-in-law and others at the time of her bowing to them,—which is also known as the '*Pādavandanika*'.—'*What is given by the Mother, etc., etc.*'—in all this there is no restriction as to time. Thus there are six kinds of *Strīdhana*—(*Vibhāgasāra,* 9.2–4).

* '*Near the Fire*'—this stands for the whole time of Marriage, from the *Nāndīshrāddha* down to the final obeisance to the Bridegroom. What is got during all this time is called '*Adhyagnika*'. This is also called '*Yautuka*' (Dowry)—so called because it is given at Marriage which brings about an *intermingling* of the bodies of the Bride and the Bridegroom—(*Dāyanirṇaya* 10.2–9).

† In a case where a Wife has become superseded by her Husband marrying a second Wife, she shall receive the same amount that has been spent over the second marriage; if the superseded Wife has had no other *Strīdhana* given to her;—in case other *Strīdhana* had been given, she shall receive half of the said amount.—This applies to those cases of supersession where there have been no circumstances justifying the supersession—(*Vishvarūpa*).

When the Husband marries another Wife while his former Wife is still living, this latter is said to be 'superseded'; such a superseded Wife shall receive as '*Ādhivedanika*'—compensation for supersession—an amount equal to what may have been given to the newly-married Wife.—This compensation shall be given only in cases where no *Strīdhana* has been previously given; if *Strīdhana* has been previously given, then she is to be given,—on account of compensation,—that amount which would make her *Strīdhana* equal to what has been given to the newly-wedded Wife—(*Aparārka*).

A Wife is called 'superseded' when her Husband takes another Wife; she is to receive as *Ādhivedanika*—compensation for supersession—an 'equal amount',—the amount spent over the new marriage.—This is to be given only in case the

Viṣṇu (17.18), however, says as follows:—

[959] 'What has been given by the (1) Father, (2) Mother, (3) Friends, and (4) Brothers,—(5) what has been received in the presence of Fire,—(6) what is received on Supersession,—(7) the Fee (Shulka),—and (8) the subsequent Presents (*Anvādhēya*),—[these constitute the *Strīdhana*].

Of these, the first six have been already defined. As regards the 'Fee' (Shulka), says *Kātyāyana*—

[960] 'What is obtained for the work of looking after the Household, the Furniture, the draught Cattle, the milch Cattle, and Ornaments—has been called the *Fee* (Shulka).'

That is, what the Wife obtains from the Master of the House, in connection with the working of the Household, the Furniture and other things is called the '*Shulka*' (Fee).*

Again—

[961] 'Whatever is obtained by the Woman, after her marriage, from her Husband's family or from the family of her relatives is called *Anvādhēya Strīdhana*.'

Thus there are *ten* kinds of *Strīdhana*.†

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superseded Wife has not received her *Strīdhana* previously, either from her Father-in-law or Husband. In case she *has* received it, she is to receive half of the said amount;—i.e. that which, along with the *Strīdhana* previously given, would make up the amount spent over the new marriage—(*Mitākṣarā*).

If she has previously received her *Strīdhana*, she shall receive only half of what has been given to the new wife—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

She is called 'superseded' over whose head the second marriage has taken place —(*Vivādaratnākara*, p. 523; *Vivādachandra* 23.1–8).

The Wife is 'superseded' over whose head the Husband has married again; to such a Wife shall be given, on account of her supersession, ornaments and other things, equal to what has been given to the second Wife, with the condition—'if no *Strīdhana* has been given to her'.

'*Ādhivedanika*' is what is given to the first Wife at the time of marrying the second Wife—(*Vīramitrodaya*, p. 690; also *Vibhāgasāra* 9.2–9).

This text is cited in support of the view that if the Wife has had her *Strīdhana*, she shall be given only half the share given to a Son—(*Smṛtitattva* II, p. 166).

Though the Text speaks of the 'superseded' Woman only,—yet it applies to all those Women who have received no *Strīdhana*—so say the *Dāyabhāga* and others —(*Dāyanirṇaya* 18.2–10).

* As this text stands in the original of *Viṣṇu-Smṛti*, the term '*Shulka*' appears to stand, as usual, for the *Nuptial Fee* (see Jolly—Sacred Books of the East, p. 69). But the *Chintāmaṇi* and the *Vivādaratnākara* (p. 525) both take the term in an entirely unusual sense; the latter remarks—'The *Shulka* is the money that is given to the Woman by the servants of the House, by way of bribe for keeping them in the good graces of the Master'. This again is different from the explanation of the *Chintāmaṇi* above.

† Six kinds have been defined by *Manu* under Text 954 above,—the *seventh*, the *Ādhivedanika*, has been defined by *Yājñavalkya* in Text No. 958 above;—*eighth* is the *Shulka*, defined in Text 960,—and the *ninth* is the *Anvādhēya*, which, it seems, has been counted as *two*—(1) what is obtained from the Husband's family, and (2) what is obtained from the family of her relatives.

'*This has been held to be Strīdhana*'—this has to be supplied in the Text (*Mitākṣarā*, p. 845).

'*After marriage*'—This brings out the significance of the name '*Anvādhēya*'—'what is obtained (*ādheya*)' 'after the marriage (*anu*)'—(*Smṛtichandrikā*, p. 660).

The term '*bandhu*' stands for the Father and Mother. Thus the meaning is that whatever is obtained after her marriage from her paternal and maternal relatives, and from her Husband and the Husband's relatives, is called '*Anvādhēya*' —(*Dāyabhāga*, pp. 71-72).

All these (ten kinds of *Strīdhana*) constitute the '*Saudāyika* Property' (Dowry) of Women; as has been explained by *Kātyāyana* in the following text—

[962] 'Whatever is obtained by the married or unmarried girl, at her Husband's or her Father's house, or from her Brother or her Parents,—has been declared to be her *Saudāyika* (Dowry).'

The term 'Husband's' also has to be construed with 'at the house'. —'*Sārdham*' is a wrong reading.—'*From the Brother*'—is only by way of an illustration (standing for *relatives* in general).—Hence what is meant is that what the Girl, married or unmarried, obtains from the Father or the Father's family, is all her '*Saudāyika*' (Dowry). All that has been said in explanation of this is only an amplification of this principle.*

As regards the using of this *Saudāyika* (*Dowry* or *Strīdhana*), the same authority (*Kātyāyana*) declares as follows:—

[963] '(A) After having obtained the *Saudāyika* property, Women are free to do what they like with it; since it has been given to them through kindness, as a means of livelihood.'

[964] '(B) In regard to the *Saudāyika* property, Women have been declared to be free to do what they like,—to sell it or give it away;—even so with regard to immoveable property.'

What is meant is that in the matter of whatever she has obtained from the family of her origin,—even of immoveable property,—the Woman is free to give away or otherwise dispose of. †

Thus there are *ten* kinds of *Strīdhana*; all this is what constitutes the '*Saudāyika*' of Women; which is defined by *Kātyāyana* (Text No. 961).

* '*Saudāyika* Property' thus is synonymous with '*Strīdhana*'. The meaning is that what is obtained by the Girl at her Father's place or elsewhere, from her Brother or Parents, is called '*Saudāyika*';—the term being derived from '*Sudāya*' —(*Bālambhaṭṭi* on *Mitākṣarā*, p. 844).

The construction is '*patyuḥ gṛhē—pituḥ gṛhē* '—'at her Husband's house and at her Father's house'.—'*from her Brothers or Parents*';—this is only by way of illustration; what is meant is that whatever a Girl obtains, either before or after her marriage, at her Father's or her Husband's house, from her Brother or Father or other relatives, is her *Saudāyika* property—(*Vivādaratnākara*, p. 510).

This sums up in brief the definition of '*Saudāyika*', as anything that a Woman has received, before and after marriage, from her Father's and Husband's family—(*Vibhāgasāra* 10.1-1).

† '*Ānṛshamsya*'—freedom from harshness; in order to save her from harsh treatment, her Father or other relatives have provided for her maintenance.—Thus in regard to *Saudāyika* property, including immoveable property, Women are free to do what they like—(*Vivādaratnākara*, pp. 510–512).

In regard to her *Saudāyika* property, the Woman is free to do what she likes,—during her Husband's life-time as well as after his death—(*Smṛtichandrikā*, p. 654).

Of the *Saudāyika* immoveable property, a Woman may make what use she likes —(*Dāyabhāga*, p. 76).

'*Saudāyika*' is what has been obtained from one's *Sudāyas*—i.e. the Father, the Mother and the Husband's relatives.—'*As she likes*'—i.e. for pious purposes—(*Smṛtitattva*, II, pp. 184 and 190).

These texts declare the Woman's freedom to do what she likes in regard to some kinds of property—(*Vyavahāramayūkha*, p. 155).

In regard to her *Saudāyika* property, the Woman is free to do what she likes—(*Vivādachandra* 22.1-2).

From all these texts of *Kātyāyana*, it is clear that in regard to immoveable property also, the Woman is free to give or sell it; but in regard to what she has received from her Husband, she has this freedom only in regard to moveable property, it does not extend to immoveable property—(*Vibhāgasāra* 10.1-1).

In regard to the *Saudāyika* property, says *Āpastamba*—

[965] 'The Ornaments are the Wife's; also the family-property, according to some.'

'*The Wife's*'—'property' is understood.—'*Family-property*'—that is, all that was obtained at marriage and other occasions from the Father's or the Husband's family.*

With reference to 'Ornaments', say *Manu* (9.200) and *Viṣṇu*—

[966] 'The Heirs shall not take the Ornament that may have been worn by a Woman during her Husband's life-time; they become degraded if they do take it.'

Even though the Ornament may not have been given to her by her Husband, if she has worn it with his permission, it becomes, by that mere fact of wearing, her property;—so says *Medhātithi*.

In regard to this, as to other moveable and immoveable property, the Woman is free to give away or sell,—according to the text of *Kātyāyana* quoted above.†

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*'*Jñāti-dhanam*'—such portion of the property as may have been given to her as the marriage-portion—(*Vivādaratnākara*, p. 509).

† During the Husband's life-time, whatever Ornament may have been worn by the Woman,—or what may have been given to her for her adornment,—this the Sons shall not take while she is alive; after her death, of course, they divide it among themselves—(*Sarvajñanārāyaṇa*).

If an Ornament has been worn by the Wives loved by the Father during his life-time, the Sons shall not take it when they are dividing the Father's property among themselves—(*Kullūka*).

If something has been given to a Woman by her Husband for the purpose of adornment, if her Brothers-in-law or others take it from her they incur sin—(*Rāghavānanda*).

Inasmuch as 'Ornaments' have not been specifically mentioned among '*Strīdhana*',—there might be an idea that as forming part of the Father's property, they should go to the Sons; this text serves to preclude that idea—(*Nandana*).

'*Dāyāda*'—Sons;—'*tam*'—Ornament;—'*tē*'—the Sons—(*Rāmachandra*).

This refers to Ornaments that have been worn constantly—(*Aparārka*).

Ornaments should remain with those by whom they have been worn; those that have not been worn shall be divided. 'Women' have been mentioned only by way of illustration,—what is asserted is not restricted to Women only—(*Mitākṣarā*, p. 639).

The *Prakāsha* says that, according to *Medhātithi*, even though the Ornament may not have been actually given to her, if she has worn it with her Husband's permission, it should not be taken away from her by the coparceners—(*Vivādaratnākara*, p. 509).

'*Worn*'—i.e. in which the exclusive ownership of the Woman has been produced by the fact of its having been a 'loving gift'—(*Madanapārijāta*, p. 686).

As regards the Ornaments of the Women, even though they may have been made out of the common property, they shall not be divided—(*Vivādachandra* 21.2–8).

'*Worn*'—constantly; if the Ornament has been worn by her constantly, it shows that there is no trick or fraud in it, and hence it becomes certain that the thing is the Woman's own *Strīdhana*.—'*Dāyādāḥ*'—Daughters and other heirs—(*Smṛtichandrikā*, p. 559).

'*Dhṛtaḥ*'—given by her Husband and others and worn by her—(*Vyavahāramayūkha*, p. 156).

'*Worn*'—with her Husband's permission—(*Vibhāgasāra*, 10.1–4).

The opinion of *Mishra* (*Vāchaspati*?) is not favoured by the followers of *Dāyabhāga*—(*Dāyanirṇaya* 21.1–7).

Nārada—

[967] 'What has been given to the Woman by her Husband, through love,—she may, even on his death, enjoy it as she likes, or give it away,—with the exception of immoveable property.'

Thus the conclusion is that in regard to the moveable property given to her by her Husband, the rights of the Woman are absolute,—but not so over the immoveable property.

This is the settled rule regarding the *Saudāyika* property (*Strīdhana*) of Women.*

On this point, says *Kātyāyana*—

[968] '(A) On the death of her Husband, the sonless Widow can use her Husband's property as she likes; faithful to her Husband's bed, she shall dwell with her elders and enjoy the property quietly till her death; after that the heirs shall receive it. During his life-time, she shall take care of the property.—Otherwise (i.e. in case he has left no property), she shall pass her days among his family.'

'*Bhartṛ-dāya*' is Husband's property. It is of two kinds—(*a*) that which, *on the Husband's death*, devolves upon the Woman, on account of there being no other heirs to receive it, and (*b*) that which, *during the Husband's life-time*, has come into the Woman's possessions through his acquiescence.—In regard to the former (*a*), it is said that—'*On the Husband's death, the Woman can use it as she likes.*'—This, however, refers to property other than immoveable; in regard to immoveable property, the declaration is that—'*she shall enjoy the property quietly till her death, after which the heirs shall receive it.*'—'Quietly'—economically, not spending too much.—The sentence——'*the sonless Widow faithful to her Husband's bed, etc.*' sets forth a qualification which justifies her accession to the property.—In regard to the second kind of property (*b*) (which has come to her, during the Husband's life-time, through his acquiescence and permission), it is declared that—'*during his life-time she shall take care of this property*'.—'*Otherwise*'—i.e. in case the Husband has left no property at all, the Widow shall pass her days among her Husband's family.—Such is the meaning (of the four lines of *Kātyāyana's* text). †

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* The Woman is free to do what she likes in regard to what she has got from her Husband in token of love; but not in regard to immoveable property—(*Vivādachandra* 22.1–4).

What is meant is that, even on the death of her Husband, the Wife is not free to do what she likes with the immoveable property given to her by her Husband.—The word '*yathākāman*' connotes freedom to do what one likes.—Thus the conclusion is that in regard to her *Saudāyika* property, as also to the loving gifts apart from immoveable property, the Woman is free to do what she likes,—while in all other cases, even in the matter of her *Strīdhana* property, she is not so free—(*Smṛtichandrikā*, p. 56).

The addition of the qualification 'given by her Husband' implies that in regard to immoveable property, other than that given by her Husband, she is free to give it away—(*Dāyabhāga*, p. 77; *Smṛtitattva*, II, p. 184).

What is meant is that in regard to the immoveable property given by her Husband, all that the Woman is entitled to is to reside (in the house) and enjoy it in other ways, not to sell it or give it away or dispose of it in any other way—(*Vīramitrodaya*, p. 691).

In regard to immoveable property given to her by her Husband, the Woman is not free to do what she likes—(*Vyavahāramayūkha*, p. 155).

† All the digests which explain the words of the two verses have taken them in the above manner; and it is beyond doubt that in the above interpretation, the explanation of the sentence '*Kṣapayēt tatkulēnyathā*' is forced. The simple meaning of the lines is as follows:—'(*a*) On the Husband's death, the Woman shall use the Husband's property as she likes;—(*b*) during his life-time she shall take

Thus then, in regard to the immoveable property of her Husband, even when it has become transferred to the Wife,—she does not have the right to give away or otherwise dispose of that property; that this is also meant by the texts follows from the fact that information on this point is wanted just as much as on those expressly stated. If this were not meant then the need of information in regard to the laws on this point would remain unfulfilled.

This same argument also disposes of the objection that has been raised regarding the incompatibility of these texts being introduced in the context dealing with the *Saudāyika* property: because the 'need of information' is always more potent than mere 'Context'. The fact of the matter is that —just as, in accordance with these texts, Women have no right to give away or otherwise dispose of the *immoveable property* given to them by their Husbands, so also they have no right to sell or give away the Husband's *immoveable property* that has come into her possession (on his death).

Such is the opinion of the *Prakāsha* and the *Ratnākara* also.

This same law applies also to the case where her Husband's property has devolved upon the Woman, through the Son and other heirs of her Husband; because here also the said information is needed and it has nowhere been asserted that the said law applies only in those cases where the property has come to the Woman *directly* from her Husband.*

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care of the property, *or spend it over his family*;—(c) the sonless Widow, faithful to the Husband's bed and living with her elders, shall enjoy the property quietly till her death, after which the heirs shall receive it'.—The commentators had recourse to the complicated interpretation because they felt compelled to thrust upon these texts the distinction between 'moveable' and 'immoveable' property.

* (A) In regard to what has been given to the Woman by her Husband, her freedom lies with property other than immoveable. The 'Husband's property' coming to the Wife may be of two kinds—(1) that in which the Wife's ownership has been created on the Husband's death by reason of there being no other person entitled to inherit it; and (2) that in which her ownership is there during the Husband's life-time by virtue of her relationship to him.—In regard to (1), the Wife is entitled to do what she likes with all but the immoveable property; while in regard to (2) it is added—'she should take care of the property'——i.e. in obedience to his wishes.—Such is the explanation according to the *Prakāsha*; according to *Halāyudha* and *Pārijāta* however, the term '*bhartṛdāya*' stands for the *Strīdhana property given by the Husband*.—The former is the correct view—(*Vivādaratnākara*, p. 512).—(B) In regard to the immoveable property, it is said that she shall enjoy it till her death, after which the coparceners shall obtain it (*ibid.*, p. 511).

(A) '*Bhartṛdāya*' is what has been given to her by her Husband; in regard to this, she is free to do what she likes, only after her Husband's death; during his life-time, she is to take care of it,—i.e. use it only with his permission—(*Smṛtichandrikā*, pp. 654-655).—(B) '*Kṣāntā*'—bearing with all the obstacles that her coparceners place in the way of her making use of the property.—This refers to cases where the Husband having been *undivided* from his coparceners, her Father-in-law and others happen to be either unable to protect and maintain her, or engaged in other kinds of business, and the Widow has therefore taken by herself the undivided property for the purpose of maintaining herself—(*ibid.*, p. 677).

(A) What is meant is that when her Husband is dead, the Widow can freely make use of the property given to her by her Husband; but during his life-time, she shall take care of it; i.e. she shall not be too liberal with it—(*Dāyabhāga*, p. 74).—(B) The Husband's immoveable property the Widow shall only enjoy, she cannot give it away—(*ibid.*, 22.1-7).

'*As she likes*'—i.e. for pious purposes—(*Smṛtitattva*, II, p. 190).

(A) When her Husband's property passes into her possession, on his death, the Widow may make what use of it she likes. But she shall only enjoy it as she likes, she shall not spend it in improper ways—(*Vivādachandra* 22.1-2-4).

(B) Living in the Husband's house, with her elders—Father-in-law and the rest—the Widow shall enjoy her Husband's property, but she shall not be free to give it away, pledge or sell it. After her death, the property shall go to her Daughter and others entitled to inherit the property; it shall not go to the Agnates; the claims of these latter being lower than those of the Daughter and others, on account

Reverting to the subject-matter of the context (i.e. *Strīdhana*)—*Devala* says—

[969] 'Property given for Maintenance, Ornaments, Fee and Gifts,—these should be *Strīdhana*; the Woman herself shall enjoy this, and her Husband shall not be entitled to it, except in abnormal times of distress.'

'*Vṛtti*'—property given for maintenance.—'*Ābharaṇa*'—Ornaments.—'*Shulka*'—what is given to the Girl by one seeking to marry her; i.e. the Nuptial Fee.—'*Lābha*'—gifts obtained from relatives.—All this is '*Strīdhana*'.*

He continues—

[970] 'If the Husband spends it in improper gifts or makes other use of it, he should repay it to the Wife, with interest; but for the Son's troubles, he can make use of the *Strīdhana* property.'

That is, without the Wife's consent, he should not spend the said property in frivolous gifts or make use of it; but both these—gift and use—have to be made for the purpose of relieving the Sons of their troubles.†

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of having been interrupted by the intervention of the Widow—(*Dāyabhāga*, pp. 171-172).

(A) During the Husband's life-time, she shall 'take care' of the property, as she has no absolute right over it—(*Vibhāgasāra* 10.1-5).—(B) On the Husband's death, with the exception of the immoveable property, the rest of it she shall enjoy as long as she lives, and on her death, the property goes to the coparceners. If there is no property, she should pass her days in the Husband's family.—In regard to immoveable property, the Woman has no right to give or sell it. Hence there is no conflict between the texts of *Nārada* and *Kātyāyana*. Thus in regard to the immoveable property that has come to the Woman from her Husband, she has no right to give or sell it; but over such immoveable property as forms part of her '*Saudāyika* Property', she has perfect right to do what she likes.—This refers to the Husband's property which has passed on to the Woman, either directly or through her Son. But she is entirely free to do what she likes in regard to such immoveable property as she may have acquired herself by her own efforts, either during the Husband's life-time or after his death. Because the general principle is that one is free to do what one likes in regard to what he has himself acquired. Nor is there any text that denies such freedom.—It is on the same principle that when the Wife has offered the funeral cake to her Husband, and thereby acquired his immoveable property, she is regarded, in practice, to be free to do what she likes with it. This same reason lends strength to the custom that the Appointed Son of the wealthy Woman succeeds to the said immoveable property—(*Vibhāgasāra* 10.2-2).

(B) This refers to cases where the Wife inherits the Husband's property.—'*Faithful, etc.*'—i.e. not having recourse to any other man;—'*living with elders*', in her Husband's family;—'*quietly*'—i.e. not spending much, nor disposing of it by gift or sale or mortgage.—'Heirs'—the Daughter and the rest—(*Dāyanirṇaya* 5.2-4).

* *Vivādaratnākara* (p. 512) supplies exactly the same explanations as the above.

The Woman's maintenance property also is her *Strīdhana*, with which she is free to do what she likes—(*Vivādachandra* 22.1-10).

'*Vṛtti*' is property given by the Father for her maintenance;—'*Lābha*' is what is earned; i.e. what she receives in connection with the fasts and observances that she keeps for propitiating the goddess *Pārvatī* is also her *Strīdhana*. The term '*Svayameva*'—'herself'—serves to exclude her children; the exclusion of the Husband being separately emphasised in the next sentence—'the Husband is not entitled'; of course, with the exclusion of the Husband, the Brother and other remoter relations become naturally excluded—(*Smṛtichandrikā*, p. 657).

'*Vṛtti*' is what is given by the Father and others for her maintenance;—'*Lābha*'—what is obtained from somewhere for the purpose of propitiating the goddess *Gaurī*—(*Vīramitrodaya*, p. 693).

'*Vṛtti*'—property given to her by her Father and others for her maintenance;—'*Lābha*'—interest earned.

† '*Bhoga*'—enjoyment of Woman, foods and drinks, etc.—For the curing of the Son's troubles one may make use of the *Strīdhana*—(*Aparārka*).

With the Wife's consent, however, the said property may be used by the Husband even in normal times;—as declared by the same authority in the following text—

[971] 'If he makes use of the property with her consent and in a loving manner,—then he should be made to repay the Principal only, when he comes by property of his own.' *

[972] 'On coming to know that the Husband is ill, or in trouble, or harassed by creditors,—if the Wife has spent money through love,—he should repay it of his own accord'—(*Kātyāyana*).

On finding her Husband or others to be ill or involved in other troubles, if the Woman has spent out of her property,—that should be repaid by the Husband or others of their own accord.

Yājñavalkya (2.148)—

[973] 'During Famines, for the performance of pious acts, during disabling illness,—if the Husband has made use of the *Strīdhana,* he need not repay it to her.'

'*Pratirodhakē*' qualifies '*vyādhau*',—i.e. during such illness as disables the man from performing pious acts.—What is meant thus is that if the Husband has made use of the *Strīdhana,* when he was unable to perform, in any other way, the obligatory pious duties,—then he should not be made to pay it against his wish.†

If one obtains money from his Wife on the pretext of some urgent business, but spends it in making frivolous gifts and enjoyment, he should refund it to her, along with interest. For the curing of the troubles of the Son however, he may spend the *Strīdhana* even without the Wife's consent—(*Vivādaratnākara*, pp. 512-513).

For the purpose of the treatment of the Son's diseases, the *Strīdhana* may be used even without the Woman's consent—(*Vivādachandra* 22.1–10).

'*Vṛthā*'—without necessity, i.e. in normal times. What is stated here refers to cases where the expenditure has been incurred without the Woman's consent, but without compulsion or use of force of any kind; as the only retribution mentioned is *repaying with interest*, without any penalties.—The sentence, 'The Husband is not entitled except in times of distress' implies that even in times of distress, it is the *Husband alone*, and no one else, that is entitled to spend. It is to this end that we have the fourth line where 'Husband' is the Nominative understood after '*arhati*'.—The term '*Son*'—stands for any member of the family.—'*Ārti*' stands for such trouble as cannot be got over without the expenditure of money. For the removal of such troubles and in times of distress, the Husband may spend the *Strīdhana* property, even without the Wife's consent—(*Smṛtichandrikā,* p. 657).

The Husband is forbidden to use it in making frivolous gifts or to spend it. But even the giving and the expenditure may be done for curing the ills of the Sons —(*Vibhāgasāra* 10.2–8).

* With her consent, he can use the property, even in normal times; and if he has the means to repay it, he should repay the Principal only—(*Vibhāgasāra* 10.2–8).

† The implication of this text is that, if persons other than the Husband—such as the Brother and the like—were to take the property, even in times of distress,—such as Famine and the like,—he would have to make it good.—When a debtor is held up and told not to move without paying off the debt, it is called '*Sampratirodhaka*', 'Distraint'; according to others, it means the time when the city is under siege—(*Vishvarūpa*).

'*Durbhikṣa*'—scarcity of food-grains.—'*Dharmakārya*'—such religious acts as are obligatory, not those that are voluntary.—'*Vyādhi*'—is painful and prolonged illness; if the property is used for the treatment of such disease.—'*Sampratirodha*' is being kept in chains and the like.—On these occasions, if he has no means of his own, the Husband may use his Wife's money and free himself from these calamities. And if he is not possessed of the means of repaying it, he need not repay it to her.—

The exception to the above has been stated by *Kātyāyana* in the following texts—

[974] 'If the man has two Wives, and does not approach the one concerned, then he should be compelled to repay what he had taken, even though it may have been given to him through love.*

This refers to cases where the man is faced with the difficulty of not being able to raise a loan—(*Aparārka*).

'*Durbhikṣē*'—during a Famine, for supporting the family;—for the purpose of performing such religious acts as must be performed;—during illness; when he has been taken prisoner;—if on these occasions, the Husband, who has no other means, use his Wife's money, he need not repay it. He must repay it if he uses it on any occasion other than these.—No other relative of hers except the Husband shall use the *Strīdhana* during the Woman's life-time; because for such appropriation, penalties have been prescribed in several texts—(*Mitākṣarā*).

'*Sampratirodhakē*'—when he has been made a prisoner.—The particle '*cha*' implies the condition that *the Husband has no means of his own*, which goes with every one of the circumstances mentioned—(*Vīramitrodaya-ṭīkā* on *Yājñavalkya*).

'*Pious act*'—such as must be done.—'*Illness*'—such as to interfere with the man's carrying on his business.—For the cure of such ills, if the Husband has made use of his Wife's money, he need not repay it—(*Vivādaratnākara*, pp. 513-514).

'*Pious act*'—such as must be done.—'*Sampratirodhakē*' qualifying '*vyādhau*' —an illness which, if not cured, would make the man unable to carry on his business —(*Vivādachandra* 22.2-4).

'*Pious acts*'—obligatory, occasional and voluntary,—as also in some cases, that which is performed for the allaying of evil.—'*Sampratirodhakē*'—the distraint under which one has been put by his creditor and from which he cannot free himself without paying off the debt.—'*Makes use of his Wife's money*'—on account of there being no other way out of the difficulty.—'*The Husband*'—who is poor and unable to repay the money; the implication is that, if possible, the money should be repaid—(*Smṛtichandrikā*, p. 658).

'*Pious act*'—as must be done.—'*Sampratirodhakē*'—in cases of arrest, imprisonment and the like.—Under these circumstances, if the Husband has no other means, he may spend his Wife's money, and he need not repay it; that is, there is no rule making repayment compulsory. If he uses it under any other circumstances, he must repay it—(*Madanapārijāta*, p. 670).

'*Sampratirodhakē*'—In cases of arrest, etc.—If the Husband has no means of his own, he may make use of the Wife's money, which he need not repay. Under other circumstances, he must repay it—(*Parāsharamādhava*, p. 375).

If during Famines and such other circumstances, the Husband is unable to live without drawing upon his Wife's property, he may take it; but not in any other case—(*Dāyabhāga*, p. 77).

'*Pious acts*'—i.e. the obligatory and occasional ones. '*Sampratirodhakē*'—when punished by the King with imprisonment.—*Vāchaspati*, however, has taken this term as qualifying '*Vyādhau*', 'illness', and explained it to mean 'disabling'—(*Vīramitrodaya*, p. 694).

'*Sampratirodhakē*',—when put by the creditor or others under such distraint as interferes with his meals—(*Smṛtitattva*, II, p. 185).

The mention of the 'Husband' implies that the *Strīdhana* shall not be used by *others* even in times of distress,—such as Famine and the like.—'*Pious acts*'—the obligatory ones.—'*Sampratirodhakē*'—in case of imprisonment—(*Vyavahāra-mayūkha*, p. 156).

'*Sampratirodhakē*'—is an adjective qualifying '*Vyādhau*'—'disabling illness'.—The exception to this follows in the next text (No. 974)—(*Vibhāgasāra*, 11.1-2).

'*Sampratirodhakē*'—when a creditor has put the Husband under distraint, by not allowing him to take his food and so forth—(*Dāyanirṇaya* 5.2-2).

* If the man, having used the Wife's money, marries another Wife and disregards the former Wife,—he should be compelled by the King to repay the money—(*Dāyabhāga*, p. 78; also *Vīramitrodaya*, p. 692).

'*Dvibhāryaḥ*'—this supplies the reason for his not loving the former Wife. Should he discontinue to visit her even during her 'periods', he should be compelled to surrender to her what she may have given him, even through her love for him—(*Vibhāgasāra* 1.1-2).

[975] 'In a case where the Woman is deprived of food, clothing and residence, she may take away her own share in the property, from the coparceners. —Having obtained her money, she should live in her Husband's house; if afflicted with disease, she should, on the approach of death, go to her relatives;—such is the opinion of *Likhita*.*

[976] 'One addicted to evil ways, or immodest, or prone to waste wealth, or unchaste,—does not deserve to have any *Strīdhana*.

[977] 'The *Strīdhana* that had been promised to her by her Husband should be given to her by the Sons in the same way as the Father's debts,—if she continues to stay in the Husband's home and does not go away to live in her Father's house.' †

'*Bhajatē*, etc., etc.'—That is, if the Husband does not meet her even during her courses;—or if he does not provide her with food and clothing,—then, even though she may have given him the money to relieve him of his illness and other troubles, he should be compelled to repay it.

'*Prāptē*, etc., etc.'—That is, when the money advanced has been recovered by the Woman, she should continue to live in the Husband's house, and should not go away to her Father's house.

'*Apakāra*, etc., etc.'—That is, if the Woman is of such character, then even her *Strīdhana* should be taken away from her by her relatives.

'*Bhartrā*, etc., etc.'—This is easily understood.

SECTION (I)—PARTITION OF STRĪDHANA

On this subject, says *Manu* (9.192 and 193)—

[978] 'When the Mother has died, all the uterine Brothers and uterine Sisters shall divide the Mother's property equally.'‡

[979] 'If there are Daughters of those Daughters,—to those also something shall be lovingly given proportionately, out of the property of their maternal Grandmother.'

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* If a Wife does not receive food and clothing, she must be repaid what she may have given in token of love—(*Vivādachandra* 22.2-3 to 6).

If the Husband does not provide food and clothing,—these also the Wife shall extract from him by force—(*Dāyabhāga*, p. 78).

If the Husband fails to provide her with food, clothing and residence, the Wife shall take all these by force,—or money enough to supply her with these.—But only if she herself is free from defects and faults—(*Vīramitrodaya*, p. 692).

If the Husband does not supply her with food and clothing, she shall take from him even what she may have given to him for meeting the expenses of his treatment during illness, etc., etc.—(*Vibhāgasāra* 1.1-2).

Having obtained her property, she shall live in her Husband's house; when afflicted with serious illness, she shall go to the house of her Husband's relations—(*Vivādaratnākara*, p. 514).

† The term 'Sons' includes the *Grandsons* also. This implies that over the *Strīdhana* property of the Mother, the Sons have no right; so that the *Strīdhana* cannot be divided during the Mother's life-time—(*Smṛtichandrikā*, p. 659).

'*Promised*'—to the Wife—(*Vyavahāramayūkha*, p. 156).

If the Father had promised that such and such a thing shall be given to her, then that must be given—(*Vibhāgasāra* 11.1–9).

If the Father had promised some *Strīdhana* to his Wife, but died without fulfilling the promise,—the Sons should make good that promise—(*Dāyanirṇaya* 21.1–3).

‡ [*This text has been quoted and commented upon above as Text No. 869.*]

'*Equally*'—i.e. without any unequal (preferential) shares.—'*Sanābhayaḥ*'—uterine.* Of the *Sisters*, only the *unmarried* ones receive equal shares, as declared in the following text of *Bṛhaspati*.

Bṛhaspati (25.87)—

[980] 'The *Strīdhana* goes to the children; the Daughter also is entitled to share it, if she is not married; if she is married, she receives only an honorific present.'

'*Apatyānām*', 'children',—i.e. the *Sons*.—'*Tadaṁshinī*', 'entitled to share it';—as no particular part is definitely asserted, it follows that she shares the property *equally*.—'*Samūḍhā*'—i.e. married.—'*Mānamātrakam*'.—some present, in proportion to the property.†

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* If the married Daughters have died, the 'honorific trifle' that should have been given to them should be given to their Daughters, by their maternal Uncles.—'*Prītipūrvakam*'—of their own free will—(*Sarvajñanārāyaṇa*).

If there are unmarried Daughters of the Daughters, they should be given something out of the property of the maternal Grandmother;—'*lovingly*'—i.e. in a manner in which they may feel honoured—(*Kullūka*).

'*Prītipūrvakam*'—i.e. it is for pleasing them: there is no compulsion—(*Rāghavānanda*).

'*Prītipūrvakam*'—indicates that it must be given—(*Nandana*).

The Daughter's Daughters should be given the share that they deserve—(*Rāmachandra*).

If the Mother has Daughters as well as Daughter's Daughters, the latter also should be given something—(*Mitākṣarā*, p. 850).

'*Yathāṁshataḥ*'—according as the property is large or small—(*Vivādaratnākara*, p. 516).

When there are Daughters as well as Daughter's Daughters, the latter also shall be given *something*,—not a regular share in the property—(*Madanapārijāta*, p. 666).

'*Yathārhataḥ*'—[i.e. for '*yathāṁshataḥ*']—i.e. after considering the character of the persons concerned, the use to be made of the property, the relative poverty of those concerned and so forth.—'*Lovingly*'—the implication is that if the Uncles are affectionately inclined towards their Nieces, they will give them 'something', otherwise not—(*Smṛtichandrikā*, pp. 661-662).

This rule is for cases where there are Daughters as well as Daughter's Daughters—(*Parāsharamādhava*, p. 371).

Something should be given to the Daughter's Daughters also—(*Vyavahāramayūkha*, p. 158).

'*Prītipūrvakam*'—if there is loving kindness, then alone it should be given—(*Vibhāgasāra* 11.2.1).

† '*Mānamātrakam*'—some little thing—(*Aparārka*).

'*Apatya*' here stands for *Sons*.—'*To share it*'—i.e. to receive the same share as the Son.—'*Aprattā*'—unmarried. From this it follows that in Manu's text also (No. 978 above), it is the *unmarried* Daughters that are declared as having the same share as the Sons.—As regards the *married* Daughters, some small present may be given to them, in accordance with their position—(*Vivādaratnākara*, p. 516).

To the married and settled Daughters also, something may be given in accordance with the property, and the remainder they shall divide in the prescribed manner—(*Vivādachandra* 22.2–10).

'*Apatyānām*'—children, *in the shape of Sons*. In both lines, the particle 'cha' has the copulative force; hence both (Son and Daughter) *together* are the persons that divide the property—(*Smṛtichandrikā*, p. 661).

'*Apatyānām—male* children—(*Parāsharamādhava*, p. 372).

The term '*apatya*' stands for *Sons*. They share the Mother's property with her *unmarried* Daughters—(*Dāyabhāga*, p. 79).

'*Apatyānām*'—Sons; the Daughter being mentioned separately.—'*Entitled to share it*'—equally with the Sons.—'*Honorific present*'—as a mark of honour, she gets some little thing,—not a *share* equal to the Son's—(*Vīramitrodaya*, p. 695).

'*Entitled to share it*'—i.e. to receive a share equal to the Son's.—'*Aprattā*'—unmarried.—If there is a *married* Daughter, she shall get only an 'honorific present', —some little thing as a mark of respect.—In case there are no *unmarried* Daughters,

Gotama (28.22)—

[981] 'The *Strīdhana* goes to the Daughters, who are unmarried and unsettled.'

'*Apratiṣṭhitā*, 'unsettled'—i.e. childless; it means 'one whose Husband is poor and who is unfortunate',—according to the *Ratnākara* and others.—These also are entitled, like the Sons, to the Mother's property. *

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the *married* ones receive the same share as the Sons. This is what has been expressly asserted by *Kātyāyana*—(*Vyavahāramayūkha*, p. 158).

'*Apatyānām*'—Sons.—The *unmarried* Daughters are to receive equal shares; the *married* ones receiving only an honorific present—(*Vibhāgasāra*, 11.2-2).

* '*Unsettled*'—Those who have no means of subsistence; these are entitled to inherit the Mother's property—(*Vibhāgasāra*, 11.2-3).

Here *Gautama* lays down the title of unmarried and unsettled Daughters to inherit the Mother's property.—'*Unsettled*'—one who has no children, or who is poor or unfortunate—(*Aparārka*, p. 721).

On the death of the Mother, her property is taken first of all by the Daughters; and among them, if there is one unmarried and another married, it is the unmarried one that gets it; and the married one gets it only when there is no unmarried Daughter. Among the married Daughters also, if one is 'settled' and another 'unsettled', the unsettled one gets it.—The particle '*cha*' includes the 'settled' one also.—'Unsettled'—i.e. childless and poor.—This rule does not refer to the '*Shulka*' property of the Mother which goes to her uterine Brothers, according to *Gautama* (28.25)—(*Mitākṣarā*, p. 849).—What is said here applies to the *Father's* property also—(*ibid.*, p. 768).

If there are unmarried and unsettled Daughters, these also shall receive the same share as their Brothers.—'*Unsettled*'—one who has no one to support her, is childless, whose Husband has no property and who is unfortunate—(*Vivādachandra* 22.2-9).

'*Aprattā*'—unmarried;—'*apratiṣṭhithā*'—poor—(*Madanapārijāta*, p. 665).

The Mother's *Strīdhana*, '*Adhyagni*' and the rest (enumerated by *Kātyāyana*) goes to the unmarried Daughters,—and to such among the married ones as are 'unsettled', and not to all. 'Unsettled'—i.e. childless, poor, unfortunate or widowed—(*Smṛtichandrikā*, pp. 662-663).

The meaning is that among the Daughters, if some are married and others unmarried, the Mother's *Strīdhana* goes to the unmarried ones;—among the married ones also, if some are rich and others poor, it goes to the poor ones—(*Parāsharamādhava*, p. 337).

'*Unsettled*'—childless, poor, unfortunate, or widowed;—such is the explanation provided by *Aparārka* and *Kalpataru*: the first two only, according to *Vijñāneshvara* and others. Though the text has used the common term '*Strīdhana*', it stands for that particular kind of *Strīdhana* which is different from the three kinds of *Strīdhana* described before—(*Vīramitrodaya*, p. 697).

Among the married Daughters, if one is rich and another poor, it is the latter that receives the property.—'*Unsettled*'—poor.—In the term '*Strīdhana*' in this text, the term '*Strī*' (Woman) includes the *Father* also,—so say the *Traditionalists*—(*Vyavahāramayūkha*, p. 141).—This refers to the technical '*Strīdhana*', other than that called the '*Anvādhāya*' and that which has been given by the Husband in token of love—(*ibid.*, p. 159).—In all these texts, the term '*Strīdhana*' is used in its technical sense—(*ibid.*, p. 160).

The term 'unsettled' stands for those who, though married, are childless and without any property of their own; not having obtained a footing in the house of their Husbands—(*Medhātithi* on *Manu* 9.131).

'*Unmarried*'—not betrothed.—A Woman's *Strīdhana* is inherited first of all by her *unmarried* Daughter;—in her absence, it goes to the Daughter who has been *betrothed*, but not get married;—in her absence, it goes to the *married Daughter with a Son* and the *married Daughter expecting a child*,—both of these are equally entitled;—in the absence of these, the widowed and barren Daughters are equally entitled—(*Dāyanirṇaya* 11.1-7).—In the absence of all these Daughters, the property goes to the Sons;—(*ibid.*, 11.1-2).—In the absence of the Son, the property goes to the Daughter's Son; then to the Son's Son; then to the Son's Grandson; after that to the Son of the dead Woman's Co-wife; then, the Co-wife's Grandson; and then the Co-wife's Great-grandson.—In the absence of these it goes to the Husband;—then

Manu (9.131)—

[982] 'Whatever may be the *Yautuka* property of the Mother is the portion of the *unmarried Daughter* alone.'

'*Yautuka*'—is what has been obtained from the Father and others at the time of marriage.*

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to her Brother; then to her Mother; then to the Father.—In the event of the dead Woman having been married by the *Āsura* or other lower forms of marriage, her property goes to the heirs first enumerated, down to the Co-wife's Great-grandson; after these, it goes to her Mother, then to her Father, then to her Brother, and last of all to her Husband; according to *Manu* 9.197—(*ibid.*, 11.2).

* The term '*Yautuka*' (or '*Yautaka*', as it is sometimes spelt) is usually applied to the exclusive property of a woman, of which she alone is the sole owner. Others apply it to what she obtains at the time of her marriage, and not to *all* that belongs to her; as it is only the former over which she has an absolute right; as it has been declared that—'women become their own mistresses on obtaining presents at marriage'.—Others again hold that the term applies to the savings that the young woman makes out of what she receives from her Husband for clothes, ornaments and for household expenses.—'*Is the portion the unmarried Daughter's alone*';—since the text has added the qualification 'unmarried', it is clear that what is said here does not apply to one who has been *married*. Further, the term '*ēva*', 'alone', sets aside the implications of the context (which is that of *Appointed Daughters*). Consequently, what is said here cannot apply to the *Appointed Daughter* [who would always be a '*married*' one, as the 'appointing' is, as a rule, done at the marriage itself]—(*Medhātithi*).

'*Yautukaṁ*' *Strīdhana*.—'*Kumārībhāga*' is the share of the unmarried Daughter; —even if there be the Son, or the Appointed Daughter, or the Appointed Daughter's Son.—Thus then, even apart from the case of the Appointed Daughter, the Mother's *Strīdhana* must go to the unmarried Daughter—(*Sarvajñanārāyaṇa*).

On the Mother's death, the Mother's property goes to her unmarried Daughter; the Sons have no share in it—(*Kullūka*).

'*Yautuka*' is what has been obtained by the woman from her family. The particle '*ēva*' indicates that the said property goes to the *unmarried* Daughter, even when the Son of the Appointed Daughter is there—(*Nandana*).

'*Yautaka*' is *Strīdhana*—(*Rāmachandra*).

This shows that the unmarried Daughter has the first claim on the Mother's property—(*Aparārka*, p. 721).

'*Yautuka*' here stands for what has been given to the woman at the time of marriage by her Father and others.—*Halāyudha*, however, has explained the term as standing for what was given to the woman for the purchase of vegetables, etc. and which has become augmented by her efficient management.—In such property of the Mother's, neither Sons nor married Daughters have any shares; but even married Daughters, if childless and unfortunate, receive equal shares in it—(*Vivādaratnākara*, p. 517).

'*Yautuka*' is what is presented by people in general to the Bride and Bridegroom at the time of marriage, when they are seated together on one seat. The author of the *Nighaṇṭu* also has defined it as 'what has been given to the Bride and Bridegroom'.—But according to *Dēvasvāmin*, '*Yautaka*' is the name given to what has been obtained by the woman from her Father's house, as distinguished from that obtained in her Husband's house. This view, however, is not acceptable; the distinction being merely imaginary.—If there are several unmarried Daughters, the said property is to be divided equally among them—(*Smṛtichandrikā*, p. 662).

'*Yautaka*' is what has been obtained from the Father's family—(*Parāshara-mādhava*, p. 372).

'*Yautaka*' is what is obtained at the time of marriage—(*Dāyabhāga*, p. 82).

'*Yautuka*' is what is given to the Bride and Bridegroom when they are *seated together* at the time of marriage.—'*Yautaka*' and '*Yautuka*' both forms are correct. —When there are several unmarried Daughters, the property is divided equally.—[Dēvasvāmin's opinion is not acceptable]—(*Vīramitrodaya*, p. 696).

'*Yautaka*' is what has been obtained at the time of marriage and on other occasions by the woman seated together with her Husband—(*Vyavahāramayūkha*, p. 158).

Vashiṣṭha (17.46)—

[983] ' The females [Daughters] shall share among themselves the Mother's Toilet-articles [or Marriage-presents]'.

'*Pāriṇāyyaṁ*'—Clothes, Mirrors, Combs and such articles.*

Yājñavalkya (2.117)—

[984] 'What remains of the Mother's property, after the payment of debts, shall be divided among themselves by the Daughters,—and in the absence of the Daughters, by the offsprings (of the Daughters).'

Of the Mother's property, what remains after the debts have been paid off,—i.e. the residue,—shall be divided by the Daughters among themselves; —and in the absence of these—Daughters,—by 'the offsprings'; i.e. the Daughter's Son and the Daughter's Daughter of the dead Mother (i.e. the Son and Daughter of the Daughters). That such is the rule is shown by the words of *Manu* (Text No. 976).

This refers to the clothes and other presents that the Mother may have received at marriage, which has been specified in the *Brāhma* and other approved forms.†

This rule applies to only those cases where, apart from the *Yautuka*, there is other *Strīdhana* which could be shared by the *Sons*. If that were not so, then the Son, who would perform the *Shrāddha* for the Mother, would become entirely excluded from her property—(*Vibhāgasāra* 11.2-4).

* '*Pāriṇāyyaṁ*'—Clothes, Mirrors, Bracelets and so forth—(*Vivādaratnākara*, p. 517; also *Vibhāgasāra* 11.2-6).

What belonged to the Mother at the time of marriage is to be divided among the Daughters—(*Vivādachandra* 23.1.1).

'*Pāriṇāyyam*'—property obtained at marriage—(*Dāyabhāga*, p. 82).

What has been obtained by the Mother at the time of marriage goes first to the unmarried Daughter and, in her absence, to the married Daughter;—even when there are Sons—(*Smṛtitattva* II, p. 185).

† Just as *Sons* are equal sharers in the Father's property, so are the *Daughters* in the Mother's property; they shall divide among themselves only what remains after the debts have been paid off; but they shall not be liable for the debts if the Mother has left no property.—"Have then the *Sons* nothing to do with the Mother's property?"—No, it is not so; in the absence of Daughters, the '*Anvaya*'—i.e. the Sons—come into the property.—Other people have explained the second sentence to mean that 'in the absence of the Daughter, the property goes to the *Anvaya*, Son *of the Daughter*'. But this is not right. Because there is a direct declaration in the Veda, to the effect that 'if there are both Son and Daughter, it is the *Son* that inherits the property'.— And it is only because of the declaration in the first sentence of the present text that the Daughters have the first claim—(*Vishvarūpa*).

As regards the Mother's property, after the debts have been paid off, the residue shall be divided by the Daughters among themselves;—and in the absence of the Daughters, it goes to the 'offspring' *of the Daughters*; and in the absence of Daughters, as also of their offspring, the property goes to the Sons of the deceased Mother—(*Aparārka*).

To the general rule that 'the Sons shall divide the property of the parents among themselves', the present text sets forth an exception: The Mother's property the Daughters shall divide among themselves,—but only what remains after the paying off of the Mother's debts. The implication is that if the Mother's property is just enough to pay off the debts, or even less,—it goes to the *Sons*, who have to pay the debts in any case. But if there is any property left after the paying off of the debts, that property goes to the Daughters. The reason for this lies in the fact that just as the ingredients of the Father's body are found to a larger extent in the Son's body than in the Daughters,—so the ingredients of the Mother's body are found to a larger extent in the body of the Daughters; hence, if the property of the Father devolves upon the *Sons*, it is only right that that of the Mother should devolve upon the *Daughters*.—The question arising as to who should receive the property if no Daughters of the deceased are alive, the answer is that in the absence of the Daughters, the property is to go to the *Daughter's* '*Anvaya*',—i.e. her Son and other descendants. Though there is already implied in the general rule that

Kātyāyana—

[985] '(A) In the absence of Daughters, the property goes to the Sons.—(B) What had been given by the Relatives goes to the Relatives.—(C) In their absence, to the Husband.—(D) The Sisters, along with their Husbands, shall divide it with the Relatives.—Such is the law relating to *Strīdhana* and its division.'

(A) '*In the absence of Daughters, etc., etc.*'—That is, the 'Toilet-articles', as also the '*Yautuka*'—i.e. what was given to the deceased Mother at the time of her marriage, in the *Brāhma* or other approved forms, go to her Sons, in case there are no Daughters. Apart from these, whatever other property the woman may have left goes to both the Daughter and the Son,—as already explained before. (Vide Text No. 976.)

(B) and (C) '*What had been given by the Relatives, etc., etc.*'—What had been given to the deceased by Relatives other than the Father goes to the Brother and Sister,—but with this difference that if the Sister is unmarried she receives the same share as her Brother, while if she is married, she receives just some share in the property. This is what is meant by the sentence beginning with '*the Sisters*'.—(D) 'In their absence'—i.e. if there are no

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'the Sons divide the parents' property', yet it has been reiterated in order to make it quite clear.—In case the Mother has had no Daughter at all, the property goes to the Son, directly—(*Mitākṣarā*).

As regards the Mother's property, what remains of it after paying off the debts, shall be divided equally among the *Sons and Daughters*; but the Mother's debts shall be paid by the Sons.—In the absence of Daughters,—i.e. if there are no Daughters living,—the *Anvaya*—i.e. the Sons—*of the Daughters*—shall receive the share that would have been their Mother's, as declared by *Manu* (Text No. 976) and others—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

'*Ṛṇāt*'—of the Mother's debts;—'*shēṣam*'—what remains.—What is meant is that after the Mother's debts have been cleared off, the unmarried and unsettled Daughters shall take what remains of her Dowry and her toilet-articles; and in the absence of the Daughters, the *Anvaya*,—i.e. the Son and other offsprings—*of the Daughters* shall take it.—This refers to cases where the deceased had been married in the *Brāhma* form of marriage—(*Vivādaratnākara*, p. 517).

The Daughters shall take what remains of the Mother's property after the clearing off of the debts incurred by the Mother; but with this difference that if, among the Daughters, some are married and some unmarried, then the property shall go to the unmarried ones. Here first of all, the property is to go to the Daughters, and then to the descendants of the Daughters—(*Madanapārijāta*, p. 665).

What remains of the Mother's property after the paying off of her debts, is taken by the Daughters. It follows that if the Mother's property is just equal to, or less than, the amount of the debt, then it goes to the Sons (who have to pay the debt), even when the Daughters are there—(*Parāsharamādhava*, p. 370).

Some people hold that the term '*Anvaya*' (Son) stands for the Son and descendants *of the Daughters*, while according to others, it stands for the Sons *of the deceased Mother*; and according to this latter view, the property goes to the Sons (of the deceased) if there are no Daughters. This is in keeping with Custom also—(*Vyavahāramayūkha*, p. 159). What is said here regarding the Daughters receiving the Mother's property refers to such property of the Mother's as she may have acquired by spinning and such industries, as distinguished from the '*Strīdhana*' proper—(*Ibid.*, p. 160).

This refers to clothes and other things received in connection with her marriage which has been performed in the *Brāhma* form—(*Vibhāgasāra*, 11.2–7).

So long as there are Daughters, the Sons are not entitled to share the Mother's property; when there are no Daughters, then, the *Anvaya*—Sons—are entitled to share it—(*Dāyabhāga*, p. 58).

'*In the absence of Daughters*', the '*Anvaya*',—the offspring or progeny, i.e. the Son, Grandson and the rest. In case the term '*Anvaya*' is taken in the sense of the Sons *of the deceased woman*, then the second sentence would be a mere repetition of what has been said regarding the property of the 'Parents'—(*Vīramitrodaya*, p. 577).

Sons or Daughters, etc. of the deceased,—the property of the woman goes to the Husband.*

Manu (9.196)—

[984] '(A) It is ordained that the property of a woman—married in the *Brāhma*, *Daiva*, *Ārṣa*, *Gāndharva* or *Prājāpatya* form—shall go to her Husband alone,—if she dies childless.

[985] (B) But the property that may have been given to her on the occasion of the *Āsura* or other (condemned) forms of marriage, has been held to belong to her parents, in the event of her dying childless.'

'*Aprajasi*'—Childless.†

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* In the absence of Daughters and their offspring, the property goes to the Sons—(*Aparārka*, p. 721).—The second line (B) refers to the case of women married under the *Āsura* and other condemned forms of marriage—(*Ibid.*, p. 753).

The Clothes and Toilet-requisites and the *Yautuka*-property which had been given by the Father,—these kinds of *Strīdhana* go to the Son, if there is no Daughter;—the *Strīdhana* other than these goes to the persons mentioned before.—In the absence of all these, it goes to the Husband—(*Vivādaratnākara*, p. 518).

(A) This refers to *unmarried* Daughters; and to the *Yautuka* property.—(B) This refers to women married in a form of marriage other than the five commended ones (*Brāhma*, etc.)—(*Smṛtichandrikā*, p. 664).

(A) The Mother's 'Toilet-articles' and other presents—received at marriage performed in one of the commended forms,—as also the *Yautuka* given by her Husband,—go to the Daughter; and failing her, to the Son;—the *Strīdhana* apart from the said two kinds goes to both, Son and Daughter.—(B) What had been given to her by her Relatives shall go to the Brother and Sister; the unmarried Sister receiving the same share as the Brother, and the *married* Sister receiving some little thing.—In the absence of these, the property goes to the Husband of the deceased. This is what has been declared by *Manu* (vide below, Text No. 984)—(*Vibhāgasāra*, 11.2-9).

'*In the absence of Relatives*'.—This implies the absence of *Brothers* also—(*Dāyanirṇaya*, 11.2-9).

† (A) The property of the woman married in one of the commended forms of marriage—either *Strīdhana* or otherwise—goes to her Husband, if she dies childless; it goes to her children, if she leaves any.—(B) *To the parents*,—not to the Husband—(*Sarvajñanārāyaṇa*).

(A) In the five kinds of marriage, *Brāhma*, etc.—the six kinds of *Strīdhana* that belong to the woman go to her Husband, if she dies childless.—(B) The six kinds of *Strīdhana*, belonging to a woman married in any one of the condemned forms of marriage, go to her parents, if she dies childless—(*Kullūka*).

(A) If a woman dies childless, the property she had obtained from her Father and others at one of the five commended forms of marriage goes to her Husband.—(B) If she had been married under one of the condemned forms of marriage, it shall go to her parents.—'*Atītāyām*', on her death—(*Rāghavānanda* and *Rāmachandra*).

In the case of the woman married in the *Gāndharva* form, there should be option; i.e. the property should go either to the Husband or to the parents; because in the second part (B) of the text, it is stated that in the case of the marriage having been in one of the forms of marriage—*Āsura and the rest*—the property goes to the parents [and the *Gāndharva* form is one of the *condemned* forms and is always classed with the *Āsura*]—(*Aparārka*, p. 753).

(A) In the event of her marriage having been in any of the commended forms, the property of the childless woman goes to her Husband; and (B) in the event of its having been in the *Āsura* or other condemned form, it goes to her Mother and Father—(*Vivādachandra* 23.1-3).

If a woman has been married in one of the five forms of marriage mentioned, and she dies without leaving any offspring—from the Daughter down to the Son's Son,—her property goes to her Husband, not to her Mother and other relations—(*Smṛtichandrikā*, p. 664).

If the woman has been married in the *Āsura*, *Rākṣasa* or *Paishācha* form, her property goes to her Mother and Father—(*Parāsharamādhava*, p. 373).

Gautama (28.23)—

[986] 'The *Shulka* (Nuptial Fee) of the Sister goes to her uterine Brothers, after the Mother;—even before—say some.'

This refers to cases where the marriage of the deceased had been performed in the *Āsura*, *Rākṣasa* or *Paishācha* form.*

This refers only to such property as has been *given to her at the marriage*; the construction being—'*Brāhma* ..... *yaddattam*—*Āsurādiṣu yad dattam*'—(*Dāyabhāga*, p. 88).—The property that has been obtained by the woman at the time that the marriage is going on goes to her Husband, if she dies without offspring. '*Prajā*' is *offspring*. It does *not* mean that 'whatever property has been obtained by a woman married in one of the said forms of marriage,—before as well as after the marriage,—all that goes to her Husband': because the naming of the forms of marriage is meant to indicate the time of the obtaining of the property—(*Dāyabhāga*, p. 89).

The property of the woman married in the *Brāhma* and other forms of marriage,—in the event of her dying childless,—goes to her Husband; and failing the Husband, to the Husband's nearest relatives;—and the property of the woman married in the *Āsura* and other forms goes to her parents—first to the Mother, then to the Father—(*Vīramitrodaya*, p. 702; also *Smṛtitattva* II, p. 186).

That the property of the woman married in the *Brāhma*, *Daiva*, *Ārṣa* and *Prājāpatya* forms of marriage shall go to the Husband refers to *Brāhmaṇas*, for whom these four alone are the lawful forms of marriage. As for the *Gāndharva* form, that is also lawful for the *Kṣattriya*; so in the case of this latter, the Wife's property shall go to the Husband—(*Vyavahāramayūkha*, p. 161).

(A) *Manu* and others have described the eight forms of marriage—*Brāhma* and the rest,—and they have also declared which ones are commended and which not. Among those commended are the *Brāhma*, *Daiva*, *Ārṣa* and *Prājāpatya* and *Gāndharva*; and it is to cases of these forms that the first part of the rule is applicable.—(B) '*Āsurādiṣu*'—i.e. in the case of the marriage having been performed in the *Āsura*, *Rākṣasa* or *Paishācha* form.—'*Aprajasi*'—childless.—'*Mātāpitroḥ*'—this is not inconsistent with *Yājñavalkya's* assertion that the property is '*pitṛgāmī*'; because in the latter expression, the term '*pitṛ*' stands for the *Mother and Father*—(*Vibhāgasāra* 12.1-3).

* The Nuptial Fee that had been given for the woman married in the *Āsura* form goes to her uterine Brothers, and failing these, to her Mother—(*Aparārka*, p. 754).

The Nuptial Fee of the woman goes to her uterine Brothers—(*Mitākṣarā*, p. 849).—On this, the *Bālambhaṭṭi* adds the following notes:—'*Ūrdhvam mātuḥ*' means *after the death of the Mother*; so says the *Kalpataru*; the '*Mother*' meant here is the *Sister* of the 'uterine Brothers' spoken of. Thus the meaning is that—'On the death of their Sister (*mātuḥ* of the text) her Nuptial Fee goes to her uterine Brothers, even when she has left regular heirs, in the shape of the Daughter down to her Son's Son'. From this it follows that we reject the explanation that—"*ūrdhvam mātuḥ* is a distinct sentence and what is meant is that the said property goes first to the *uterine Brothers*,—after them (*ūrdhvam*), to the Mother—and failing both Brothers and Mother, to the Father".

The property obtained at marriage by a woman married in the *Āsura* and other inferior forms, goes to her uterine Brothers, on the death of their Mother,—also before the Mother's death (according to some). '*Cha*' stands for '*api*'; the meaning being that according to some people, *even* before her Mother's death, the woman's property goes to her uterine Brothers. This is the opinion of other people—says *Halāyudha*—(*Vivādaratnākara*, p. 520).

Even when the Sister has left regular heirs—from the Daughter down to the Son's Sons—her Nuptial Fee shall go to her uterine Brothers—(*Madanapārijāta*, p. 668).

Though the Nuptial Fee had been given by the Husband and others, yet it does not go to them; it becomes the property of the uterine Brothers of the deceased woman,—and failing them, to her Mother'—(*Smṛtichandrikā*, p. 665).

The property goes first of all to the uterine Brothers,—failing them, to the Mother,—failing her, to the Father—(*Dāyabhāga*, p. 95).

[So there are two opinions, the order of succession being—according to one (1) Brothers, and (2) Mothers,—and according to the other (1) Mother, (2) Brothers.]

Baudhāyana—

[987] 'The property of a dead maiden shall be taken by her uterine Brothers themselves; failing them, by her Mother; and failing her, by the Father.' *

SECTION (J)—THE PARTITION OF PROPERTY THAT HAD BEEN CONCEALED

Says *Yājñavalkya* (2.126)—

[988] 'If, after partition, it is discovered that some property had been (surreptitiously) taken by some one among themselves,—that property they shall divide again equally. Such is the law.'

The mere fact of the property not having been divided previously implying that it should be divided later on,—the reiteration of such division is only meant to show that the said surreptitious taking is not to be regarded as an act of 'theft';—such is the opinion of *Halāyudha*.†

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* Whatever property, in the shape of the crest jewel and the like, may have been given to the maiden by her maternal Grandfather and others,—or may have been inherited by her—shall be taken by her uterine Brothers—(*Mitākṣarā*, p. 865).

The '*kanyā*' meant here is the *unmarried* girl—(*Vivādaratnākara*, p. 522).

This refers to a case where, prior to the verbal betrothal, some such thing as a head-ornament and the like has been lovingly given to a girl by her maternal Grandfather, Father or other relations, as her very own—(*Madanapārijāta*, p. 469).

Any ornaments and such things as may have been given to a maiden by her maternal Grandfather and others shall be taken by her uterine Brothers—(*Parāsharamādhava*, p. 374).

Here we find a definite order of succession laid down—(*Smṛtitattva* II, p. 186).

This refers to cases where the girl has died before marriage, and to such property as ornaments and the like which may have been given to her at the time of her betrothal, by her maternal Grandfather and others.—Such is the view of the Traditionalists—(*Vyavahāramayūkha*, p. 162).

The first heir to the maiden's property is her Brother,—then her Mother,—then her Father.—This refers to cases where the maiden had been orally betrothed; and it does not apply to the property that she may have received from the Bridegroom; which latter reverts to the Bridegroom himself—(*Dāyanirṇaya* 10.2–4).

† This rule applies to those cases where the coparceners are entitled to unequal shares (as laid down in *Yājñavalkya* 2.125).—The word '*Sthitiḥ*' implies that there should be no doubt regarding the propriety of equal division—(*Vishvarūpa*).

This lays down what is to be done in a case where a Brother has wrongfully taken away something that should have been divided; and it is subsequently discovered.—If a partible property has been taken away by one of the Brothers, and it is found out after the partition of other property has been finished,—that property shall be divided among all the Brothers in equal shares,—not in unequal shares; there being no Preferential Share in the case.—The assertion of this rule being sufficient justification for the text, it does not go to prove that the man who took away the property incurred *no* sin.—A possible view that the property discovered is to be divided equally among all *except the one who had taken and concealed it*—(*Aparārka*).

In a case where joint property had been surreptitiously taken away by one of the co-sharers themselves, which is found out, not at the time of partition, but later on,—this property they shall divide equally among themselves.—'*Vibhajēran*', 'they shall divide';—this implies that it shall not be taken only by that man who has discovered it.—This being the fruitful signification of the text, it cannot be taken to imply that he who had taken the property surreptitiously incurred no sin. Specially because by law, as also by equity, the taking away of what is common property does constitute an offence—(*Mitākṣarā*).

Kātyāyana—

[991] 'If anything had been taken away by any one among themselves,—and if anything had not been divided [or wrongly divided],—on being found out, it shall be divided in equal shares,—says *Bhṛgu*.—But among undivided relatives, no one shall be made to make good what he has enjoyed.'

'*In equal shares*'—i.e. in accordance with the shares assigned in the previous division.—'*What he has enjoyed*'—i.e. the man who has enjoyed (used up) the common property that had been hidden is not to be compelled to make good.*

Section (K)—Partition among Sons of diverse Castes

Says *Manu* (9.152)—

[992]—' The *Brāhmaṇa* (Son) shall take *four* parts; the Son of the *Kṣattriya* Mother, *three* parts; the Son of the *Vaishya* Mother, *two* parts; and the Son of the *Shūdra* Mother, *one* part.'

In the *Bhārata* we find the following—

[993] '(A) *O Yudhiṣṭhira*, the property of the *Kṣattriya* shall be divided into *eight* parts; out of the Father's property, the Son of his *Kṣattriya* Wife shall take *four* parts; he shall also take the implements of battle; the

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What is meant is that in a case where, after the partition has taken place, if some part of the joint property remains unnoticed with any one of the co-sharers, it does not become his sole property; it has got to be divided.—'*Equal*'—i.e. in the same proportion as the previous partition—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

Vivādaratnākara (p. 526) has the same note as *Vivādachintāmaṇi*.

If, after the partition, it is discovered that some property had been taken away by one of the co-sharers,—that property shall be divided *in equal shares*,—i.e. *not* according to the scheme whereby the eldest gets a Preferential Share in the shape of the *twentieth part* of the property—(*Madanapārijāta*, p. 688).

'*They*'—the divided coparceners.—The meaning is that, if among persons living together, some one has taken away some property, and it is discovered after partition,—it has to be divided equally—(*Smṛtichandrikā*, p. 714).

If some one deceived the others at the time of partition, and the deceit is discovered afterwards,—the *entire* property should be divided equally: the Plural Number in '*Vibhājēran*' (shall divide) indicates that the property is not to be taken only by the man who has discovered it—(*Parāsharamādhava*, p. 382).

'*Vibhājēran*' implies—(*a*) that the property is not to go to that man only who has discovered it, and (*b*) that the man who had taken it is not to receive a smaller share—(*Vīramitrodaya*, p. 706).

This lays down the division of what had been surreptitiously kept back by the Brothers, etc.—'*Anyonyēbhṛtau*'—taken by the eldest, or the youngest, or others—(*Vyavahāramayūkha*, p. 131).

In fact, the division of the said property being necessary by reason of its not having been divided, the purpose served by the reiteration in the text is to indicate that the party who had taken the property is *not* to be regarded as a 'thief'.—Such is the opinion of *Halāyudha*.—In our opinion however, the text serves the purpose of actually laying down the partition,—in view of the fact that it is well known that in such cases the property comes to be looked upon as belonging exclusively to the person in whose possession it has been found and it may not be regarded as *joint property*; hence it becomes necessary to lay down that the property is to be divided—(*Vibhāgasāra* 12.1–6).

* For notes see under Text No. 910, where this same text has been quoted and commented upon.

Son of the *Vaishya* Wife shall take *three* parts; and the *eighth* part shall go to the Son of the *Shūdra* Wife.*—

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* (A) On the strength of the declaration contained in this text, some people have rejected the scheme of division laid down in *Manu* 9.151 [by which, the *Brāhmaṇa* takes *three*, the *Kṣattriya two*, the *Vaishya* a part and half, and the *Shūdra one* part]. But that text refers to cases where there are two or more Sons of each caste who are entitled to equal shares; whereas the present text refers to cases where the number of Sons of the various castes is not the same.—Though the shares of the *Kṣattriya* and other Sons have been set forth here in an unqualified form, yet, in another Smṛti-text, we read that—'the land acquired from gifts shall not be given to the Son of the *Kṣattriya* Wife'; while in another text we read that—'the Son born to a *Brāhmaṇa* from a *Shūdra* Wife is not entitled to a share in the landed property',—which precludes the *Shūdra* from all kinds of land.—All this restriction, however, should be understood to apply to cases where there are other forms of property also; otherwise, the Sons in question would be left without any means of subsistence.—But what we hold is that provision for subsistence has nowhere been precluded. The difference between the two cases is that, if the said Sons are entitled to regular shares', they would be entitled to sell or give away the property inherited, while of what they get as mere 'subsistence' they can take only the usufruct. Provision for the subsistence of such Sons has to be made at the time of the partition of the Father's property; for if no provision were made at that time by definitely setting aside some landed property for that purpose, it is just possible that the other Sons who have regularly inherited the landed property may squander it away, which would leave the other Sons entirely unprovided for—(*Medhātithi*).

This refers to cases where there are several Sons from all the Wives.—In this case, there is no Preferential Share.—When each of the four Wives has several Sons —and in varying numbers,—each Son of the *Kṣattriya* Wife shall receive what is one-fourth less than the share of the Son of the *Brāhmaṇa* Wife; each of the Sons of the *Vaishya* Wife shall have one-half, and the Son of the *Shūdra* Wife one-quarter of the share of the Son of the *Brāhmaṇa* Wife.—In a case where only the ***Brāhmaṇa*** and *Kṣattriya* Wives have Sons, the property shall be divided into *seven* parts,—four of these shall go to the Son of the *Brāhmaṇa* Wife and three to that of the *Kṣattriya* Wife.—In a case where there are Sons born only of the three *Brāhmaṇa*, *Kṣattriya* and *Vaishya* Wives, the property shall be divided into *nine* parts. Where there are Sons of the *Brāhmaṇa*, *Vaishya* and *Shūdra* Wives only, it shall be divided into *seven* parts; where there are Sons of the *Brāhmaṇa* and *Shūdra* Wives only, it shall be divided into *five* parts; and so on—(*Sarvajñanārāyaṇa*).

The entire property—without extracting any Preferential Share—shall be divided into ten parts (*Kullūka*).

This implies that the alternative laid down in the present text is the primary one, while that declared in *Manu* 9.151 is the secondary one (*Nandana*).

The meaning is that when a division has been made among the four Sons in the proportion of 3, 2, 1 (as laid down in *Manu* 9.151),—if any of these four Brothers (belonging to the four different castes happen to have two or three or more Brothers of the same caste as himself, he shall share his own share equally with these—(*Rāghavānanda*).

The division herein set forth proceeds on the basis of no Preferential Share having been extracted.—No significance attaches to the Singular Number in the word '*viprah*' ('*Brāhmaṇa*')—(*Vivādaratnākara*, p. 528).

Of the two alternative schemes (laid down in 9.151 and 9.153), the latter (i.e. the present text) is in agreement with *Yājñavalkya*. The discrepancy between the two schemes is to be explained as being due to the difference in the qualifications of the Sons of the *Kṣattriya* and other Wives. If, for instance, the Son born of the *Kṣattriya* Wife of a *Brāhmaṇa* happen to be senior in age and also possessed of superior qualifications, his share shall be equal to that of the Son of the *Brāhmaṇa* Wife, and so on—(*Vīramitrodaya*, p. 594).

The text lays down the method of partition among the Sons born to a *Brāhmaṇa* from his four Wives belonging to the four castes—(*Dāyanirṇaya* 20.1–7).

(B and C) '*Dṛṣṭānta*' here stands for the *Veda*; the meaning therefore is that even though a *Shūdra* Wife has not been ordained for the *Vaishya* or the *Kṣattriya*, yet, if through lust, he does marry a *Shūdra* Wife, then the Son born of her shall receive a share.—'*Yuddhaupachārikam*', 'Implements of battle', such as swords and the like—(*Vivādaratnākara*, p. 529).

[994] '(B) O descendant of the *Kurus*, for the *Vaishya*, there can be only one Wife; he may have a *Shūdra* Wife; but no instance of any such has been recorded [or according to *Ratnākara*, no such is permitted by the *Veda*]. The property of the *Vaishya* shall be divided into *five* parts, (C) O chief of the *Bharatas*; from the Father's property, the Son of his *Vaishya* Wife shall take four parts, and the fifth part shall go to the Son of the *Shūdra* Wife.'

All this scheme applies to cases where the *Brāhmaṇa* has *four* Wives, the *Kṣattriya* has three, and the *Vaishya* has two.—In cases where there have not been so many Wives, the property need not be divided into *ten*, *eight* or *five* parts.—'*Implements of Battle*'—i.e. the Horse, the Sword and so forth.

Says *Viṣṇu*—

[995] 'If a *Brāhmaṇa* has Sons of all castes except the one born of the *Shūdra* Wife, they shall divide the property into *nine* parts. So also in the case of the *Kṣattriya* and others.'

Bṛhaspati (25.30)—

[996] 'Land obtained as a Religious Gift shall not be given to the Son of the *Kṣattriya* or other Wives. Even if the Father give it, the Son of the *Brāhmaṇa* Wife shall take it away on the death of the Father.' *

Vṛddha-Manu—

[997] 'The land acquired by Brahmanical methods shall be taken by the Sons born of the *Brāhmaṇa* Wife; the House and the ancestral land shall be taken by all the Sons of the twice-born castes.'

'*Brahmadāyāgatā*'—'acquired by *Brahmanical methods*',—i.e. acquired through officiating at Sacrifices, Teaching and Receiving Gifts.—'*Twice-born castes*'—i.e. belonging to the three higher castes.†

The *Brāhmaṇa* may have Wives of all the four castes; when he has got four Sons from these four Wives, then the rule is that their shares are to be in the proportion of 4, 3, 2, 1, in the order of the castes.—Similarly the *Kṣattriya* may have three Wives and so forth.—Thus the property shall be divided into *ten* parts in the case of the *Brāhmaṇa*, *eight* parts in that of the *Kṣattriya*, and *five* parts in that of the *Vaishya*.—'*Yuddhaupachārikam*' stands for the Sword and other weapons—(*Vibhāgasāra* 12.2.1).

* The implication is that lands acquired by other means are to be given to the Sons mentioned above; but never to the Son of the *Shūdra* Wife—(*Aparārka*, p. 732).

Though the principle of division among the Sons of different castes has been laid down by *Manu* as 4, 3, 2, 1,—yet that has to be taken as referring to property other than lands obtained as Religious Gift.—The implication of this text is that land obtained by Purchase and such other means is to be given to the *Kṣattriya* and other Sons also; but the Son of the *Shūdra* Wife has been specially precluded from inheriting landed property by *Bṛhaspati* in another text. There would be no need for this special preclusion of the *Shūdra* Son if the *Kṣattriya* and *Vaishya* Sons were not entitled to inherit landed property other than that obtained as religious gift—(*Mitākṣarā*, pp. 669-670).

The special mention of 'Religious Gift' implies that land acquired by other means is to be given—(*Madanapārijāta*, p. 658).

Lands acquired by Purchase and other means are to be given to the *Kṣattriya* and other Sons, as is clearly implied by the mention of 'Religious Gift'; and also by the special exclusion of the *Shūdra* from inheriting landed property—(*Parāsharamādhava*, p. 343; also *Vīramitrodaya*, p. 595).

† *Brahmadāyāgatām*'—acquired by Brahmanical methods'; i.e. through Religious Gifts or through officiating at Sacrifices, and such other acts.—'*Sons of the twice-born castes*',—i.e. those belonging to the three higher castes—(*Vivādaratnākara*, p. 534).

Shaṅkha—

[998] 'The Son of the *Shūdra* Wife shall not be a sharer in the property; whatever his Father gives to him, that alone shall be his share. In addition, one should give to him a cow and a bull, black metal and black grains, with the exception of sesamum.'

Manu (9.154-155)—

[999] (A) 'Whether a man has a Son or no Son [of the higher castes], he shall not, according to Law, allot more than the *tenth* part to the Son of his *Shūdra* Wife.*

The land that the Father had obtained as a Religious Gift shall go entirely to the Son of the *Brāhmaṇa* Wife, not to those of the *Kṣattriya* and other Wives. The House as also the ancestral field shall go to only those Sons who belong to the three higher castes, not to the *Shūdra* Son.—'*Brahma*' is *Veda*; hence '*Brahmadāya*' means *Religious Gift*; as such gift has been sanctioned for a *Brāhmaṇa* only as one who has read the *Veda* and understood its contents—(*Dāyabhāga*, pp. 138-139).

'*Brahmadāyāgatām*'—obtained by officiating at Sacrifices, Teaching and so forth.—'*Twice-born castes*'—the *Brāhmaṇa*, the *Kṣattriya* and the *Vaishya*—(*Vibhāgasāra* 12.2-6).

The land that has been acquired by the Father by virtue of his Vedic Scholarship shall go to the Son born of his *Brāhmaṇa* Wife; the ancestral House and ancestral landed property belonging to the Sons of the first three castes.—'*Ancestral*'—acquired by the Grandfather and other ancestors—(*Dāyanirṇaya* 20.2.1).

* (A) '*Has a Son*'—has *any* Son; or the 'Son' meant may be that born of the *Brāhmaṇa* Wife, and not that of any of the three higher castes. So that if there is no Son born of the *Brāhmaṇa* Wife,—even if there are Sons of *Kṣattriya* and *Vaishya* Wives,—the Son of the *Shūdra* Wife shall receive the *eighth* part, while if there is a Son of only the *Vaishya* Wife, the Son of the *Shūdra* Wife shall receive the *third* part.—Others however explain the term 'no Son' to mean *the absence* of any Son of any Wife of any of the twice-born castes; and according to this view, the residue of the property left over after the *tenth* part has been made over to the *Shūdra* Son shall go to the *Sapiṇḍas*.—The most unobjectionable principle of division, however, would be as follows:—If the property is a large one, and there is no Son of any higher caste, the *Shūdra* Son shall receive only the *tenth* part;—if, however, the property is just enough for the maintenance of a limited number of persons only, then the whole shall go to the *Shūdra* Son.—In the case of the *Kṣattriya* and others, another *Smṛti* text has laid down the rule that—'the Son of the *Kṣattriya* shall receive 3, 2 and 1 shares' (*Yājñavalkya* 2.125): which means that the *Kṣattriya's* Son from the *Kṣattriya* Wife shall get *three* parts, his Son of the *Vaishya* Wife *two* parts and his Son of the *Shūdra* Wife, *one* part.—Others, again, explain the present text of *Manu* as follows:—When the *Brāhmaṇa* is going to give to his *Shūdra* Son any property at all, he shall collect the entire property and give to him the *tenth* part of it,—even though he be free to do what he likes.—According to this view, it would be much more reasonable to construe the text as 'the man having a Son shall give, etc. etc.'—'*dadyāt*'—'shall give'—being construed with '*satputraḥ*' 'having a son'. Otherwise, the construction would have to be—'the person whose Father has a Son, or no Son, shall give, etc. etc.',—which shall be a very far fetched one; as in this case, the term 'having a Son' shall stand for the dead Father, while the Nominative of the verb 'shall give' would be the living Son, or other *Sapiṇḍa* relations.—Thus then, in a case where there are only *Brāhmaṇa* and *Shūdra* Sons,—and no *Kṣattriya* or *Vaishya* Sons,—the *Shūdra* Son is entitled to, *not* to the *tenth* part, but to something *less*, never *more*.—When the *Brāhmaṇa* Son takes the entire property, he cannot be called either a 'sharer' or 'a receiver of four shares'; hence what has been said by *Manu* in 9.153 regarding the *Brāhmaṇa* taking 'from shares' would apply to a case where there are four Brothers (belonging to the four castes). The *Shūdra* Son also receives the *tenth* part only when there are four Brothers. These shares become correspondingly increased according as there have been two or three Brothers only—(*Medhātithi*).

'*Satputraḥ*'—Having Sons of superior Wives;—'*aputraḥ*'—having no Sons of any other caste;—'*nādhikam*'; the meaning is that, when there are no Sons of any

[1000] (B) Of the *Brāhmaṇa*, the *Kṣattriya* and the *Vaishya*,—the Son born of a *Shūdra* Wife is not a sharer in the property; his property shall consist of whatever his Father may give to him.' *

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other castes, the *tenth* part of the property shall be given to the *Shūdra*-born Son, and the rest of it shall be taken by the widows and others—(*Sarvajñanārāyaṇa*).

Whether a *Brāhmaṇa* has Sons from Wives of all the twice-born castes,—or he has no such Sons,—in either case, his immediate Heir shall not give more than the *tenth* part of his property to his Son from the *Shūdra* Wife, '*according to Law*'.—Thus, in view of this prohibition in regard to the Son from the *Shūdra* Wife, if the *Brāhmaṇa* has no Son from his *Brāhmaṇa* Wife, his two Sons, born from his *Kṣattriya* and *Vaishya* Wives, shall take the rest of the property—(*Kullūka*).

Even when partition takes place at the wish of the Father, only the *tenth* part of the property shall be given to the Son born from his *Shūdra* Wife.—'*Satputraḥ*'—he who has Sons born from Wives of all the four castes;—'*aputraḥ*'—he who has no Sons born from those Wives. The rule is that no more than the *tenth* part shall be given—(*Rāghavānanda*).

'*Satputraḥ*'—Having Sons.—No share over and above the *tenth* part shall be given to the Son of the *Shūdra* Wife—(*Nandana*).

'*Satputraḥ*'—Having a *Brāhmaṇa* Son—(*Rāmachandra*).

'*Not more*'—than the *tenth* part—(*Aparārka*, p. 735).

The meaning is that the Son of the *Shūdra* Wife, even though a 'body-born' Son, does not receive a full share, even when there are no other Sons.—'*Satputraḥ*'—having twice-born Sons;—'*Aputraḥ*'—not having twice-born Sons.—On the death of such a man, his *Kṣētraja* and other Sons, or other *Sapiṇḍas*, shall not give more than the *tenth* part of his property to his Son born of the *Shūdra* Wife. This implies that in a case where a *Brāhmaṇa* has no Son of his own caste, his Sons born of *Kṣattriya* and *Vaishya* Wives shall take his entire property—(*Mitākṣarā*, p. 716).

'*Saputraḥ*' (i.e. for '*satputraḥ*')—one who has twice-born Sons; '*aputraḥ*'—one who has no twice-born Sons.—Says *Lakṣmīdhara*—'If the Father, being pleased with his Son born of the *Shūdra* Wife, gives him anything, he should give him only the *tenth* part of his property'.—According to *Halāyudha* and *Pārijāta*, this text refers to such Sons as are born of a *married Shūdra* Wife and are absolutely devoid of good qualities—(*Vivādaratnākara*, p. 536).

This refers to a Son who is not devoted to the Father's service—(*Parāsharamādhava*, p. 344).

This precludes the giving of more than the *tenth* part to the Son of the *Shūdra* Wife, even when there are no twice-born Sons—(*Dāyabhāga*, p. 141).

'*Satputraḥ*'—having Sons born of the Wife of the same caste as himself;—'*aputraḥ*'—having no Sons born of the Wife of the same caste as himself. On the death of such a *Brāhmaṇa*, his *Kṣattriya* and other Sons, or any one else who may inherit his property, shall not give to his Son born of the *Shūdra* Wife anything more than the 'tenth part' of his property.—From this same text it follows that, if the *Brāhmaṇa* has no *Brāhmaṇa* Sons, his Sons born of the *Kṣattriya* and *Vaishya* Wives shall take all the property of their *Brāhmaṇa* Father.—The texts of *Yājñavalkya* and others that have spoken of the 'shares' of the Sons of all four castes receiving shares in the proportion of 4, 3, 2, 1, should be taken as referring to such Sons of the *Shūdra* Wife as are possessed of exceptionally good qualities—(*Vīramitrodaya*, p. 622).

'*Satputraḥ*'—Having Sons of the three higher castes—(*Vibhāgasāra* 12.7-8).

* (B)—The Son of the *Shūdra* Wife of a *twice-born* person is not an 'Inheritor of Property'.—'Is that so absolutely?'—No! whatever his Father may give to him—i.e. the *tenth part*, which the Father may have allotted to him,—that shall be his property, and he obtains nothing more out of his paternal property.—Some people hold that this text refers to the Son born of an *unmarried Shūdra* woman; third argument being that there is nothing in the text to indicate the Mother being a *married Wife*; so that what the text means is that for the Son born of a *Shūdra* woman, the provision that the Father may make for his maintenance, or any share that he might allot to him during his life-time,—that shall be his property, and his Brothers need not give him anything. In connection with this, *Gautama* (28.39) says—'As regards the Sons of unmarried women, they shall, if they are obedient, receive enough for subsistence, in the manner of Pupils'.—According to these men, however, it would follow that the Sons born of *unmarried Kṣattriya* and *Vaishya* women are entitled to regular inheritance, and it is not known to what shares these would be entitled—(*Medhātithi*).

(A) '*Has a Son*'—i.e. has a Son of one of the three higher castes; or '*no Son*'—i.e. has no Son of the same kind.—(B) '*Is not a sharer in the property*',—i.e. not entitled to any property other than the *tenth* part of the Father's property,—says the *Kalpataru*.—According to the *Pārijāta* however,

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The Son of the *Shūdra* Wife may get even more than the 'tenth part', if his Father has given it to him—Not an 'inheritor of property'—beyond the *tenth part*.—'*His property*';—i.e. what his Father may have given to him, that alone he shall get, beyond the *tenth part*—(*Sarvajñanārāyaṇa*).

The Son born to a *Brāhmaṇa* or *Kṣattriya* or *Vaishya*—from a *Shūdra* Wife——does not *inherit* any property; whatever his Father gives him, that alone shall be his property.—Here we have the negation of the share assigned to the *Shūdra* Son in *Manu* 9.154; this therefore should be treated as a case of *option*; to be determined by considerations of the qualities of the Sons concerned; if they are possessed of superior qualities, they get the share as declared under *Manu* 9.154; if they have no good qualities, they get no *share*, as declared in the present text.—Or, the denial of the 'tenth part' in the present text may be taken as referring to the Son of an *unmarried Shūdra* woman—(*Kullūka*).

In a case where the division is being made by the Sons, the Son of the *Shūdra* Wife, if devoid of good qualities, shall not receive any inheritance. That is, the 'tenth part' shall not be given to him—(*Nandana*).

'*Does not inherit*'—i.e. if he is devoid of good qualities—(*Rāmachandra*).

This text precludes the Son of the *Shūdra* Wife from Inheritance, in cases where he has already got something from his Father, as a loving gift. If total exclusion were meant, then the texts ordaining shares for such a Son would become meaningless —(*Aparārka*, pp. 732 and 735).

In a case where there are two Sons—one born of a *Shūdra* Wife and another born of a *non-Shūdra* Wife,—the Son of the former, *if unmarried*, is not entitled to inheritance and the whole property goes to the *non-Shūdra* Son—(*Smṛtichandrikā*, p. 614).

This refers to cases where the Son of the *Shūdra* Wife has already received some property through his Father's favour; in cases where no such property has been given, the allotting of one share to him would not be repugnant to the present text.—[It is not right to take the present text as referring to the Son of an unmarried *Shūdra* woman—says the *Bālambhaṭṭi*]—(*Mitākṣarā*, pp. 670-671).

In a case where the Father, during his life-time has already given something to the Son born of his *Shūdra* Wife, his Brothers need not give any share to him at the time of partition; in cases where the Father has not given him anything, he does receive a share—(*Madanapārijāta*, pp. 658-659).

According to *Lakṣmīdhara*,—in a case where the Father, being pleased with the Son of his *Shūdra* Wife, wishes to give him some property, he should not give him anything more than the *tenth* part of his property; such is the meaning of *Manu* 9.154. According to this view, the assertion that 'the Son of the *Shūdra* Wife shall not inherit property' would mean that he is not entitled to anything that has not been given to him by his Father.—According to *Halāyudha* and the *Pārijāta*, on the other hand, the former text (9.154) refers to such Son of the *married Shūdra* Wife as is devoid of good qualities, and the present text (155) refers to such Son of the *unmarried Shūdra* woman as is devoid of qualities, and precludes him from all share in the property.—(*Vivādaratnākara*, p. 536).

There is no inconsistency between these two texts of *Manu*; as the present text refers to cases where the Son in question has had some property given to him by his Father through his love for him—(*Parāsharamādhava*, p. 343).

What is precluded here is the Son inheriting the Father's property; and this should be taken as referring to cases where the Son has, through his Father's favour, already received the 'tenth part'—(*Dāyabhāga*, p. 141).

This refers to cases where the Son has already got some property given to him by the Father,—so say the *Southerners*.—It refers to such Son of the *unmarried Shūdra* woman as is devoid of good qualities,—so say the *Easterners*.—This however cannot be right; as it is not proper to introduce only conditions—such as the presence or absence of good qualities,—apart from what is directly mentioned in the text; and also because the question of the share of the Son of the *unmarried Shūdra* woman is going to be dealt with under the treatment of 'Slaves'.—Hence, the former view is the right one—(*Vīramitrodaya*, p. 596).

This means that the Son of an *unmarried Shūdra* woman does not receive any share, even in the moveable property—(*Vyavahāramayūkha*, p. 103).

what is meant is that the Son of the duly married *Shūdra* Wife also, who is entirely devoid of all good qualities, is not entitled to any share in the Father's property at all.

Bṛhaspati (25.31)—

[1001] 'If a childless person has a Son born to him of a *Shūdra* woman, and he is obedient and endowed with good qualities, he shall receive a maintenance; the *Sapiṇḍas* shall take the rest of the property.'

'*Childless*'—i.e. the man who has no Son of the three higher castes.—'*Sapiṇḍas*'—those that are nearmost; in the absence of those, even remoter ones.

This rule applies to the Son of an *unmarried Shūdra* woman; as the context in which it occurs related to *unmarried woman.**

Manu (9.173)—

[1002]—'If a Son is born to a *Shūdra*, from a slave-girl, or from the slave-girl of a slave,—he shall, when permitted, receive a share.—Such is the settled Law.' †

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* The simple meaning is that the property of the childless person goes to his *Sapiṇḍas*—(*Aparārka*, p. 735).

This refers to the Son of a woman not married to the man—(*Vivādaratnākara*, p. 536).

What is meant is that the Son shall be given some land for cultivation which should suffice for his subsistence—(*Dāyabhāga*, p. 141).

This is what is done after the death of the Father—(*Vyavahāramayūkha*, p. 103).

If a Brāhmaṇa has no Sons of the three higher castes, his property goes to his *Sapiṇḍas*.—This refers to cases where the man has a *Shūdra* Son born of a woman not married to him. In case he has a *Shūdra* Son born of a *married Shūdra* Wife, he would be entitled to a share in the property—(*Vibhāgasāra* 12.2–11).

† In the case of *Shūdras*, the child born from an unmarried woman, or from an 'unauthorised woman', is a 'Son'.—From the present text, it is clear that if a slave is to beget a child upon a slave-girl belonging to another slave, that child would belong to the former.—'*When permitted*'—by his Father—'*shall receive a share*',—equal to that of the 'Legitimate' Son,—when the partition is made during the Father's life-time,—or when the Father has declared to his Sons that 'this child shall receive a share equal to yours'.—If however the Father does not permit it, what should be done has been declared in another Smṛti-text—'the Son born to a *Shūdra* from a female slave shall receive a share according to the Father's wish: but on the Father's death, his Brothers shall assign to him half-a-share; if he has no Brothers, he shall take the entire property except when there are his Father's Daughter's Sons (*Yājñavalkya* 2.133-134, *vide* 1001 below). If the latter are there, they shall be treated as 'legitimate' Sons of their maternal grandfather.—In the case of the *Brāhmaṇa* and other castes, Sons born of slave-girls are entitled to mere subsistence—(*Medhātithi*).

If a Son is born to a Son from an unmarried slave-girl,—or from a slave-girl belonging to his slave,—such a Son shall receive a share, if permitted by his Father; if not permitted, he shall receive bare maintenance.—This implies that the *Shūdra* may have a 'Son' born to him from a slave-girl not married to him, but belonging to him somehow,—but not from a woman married to some one else—(*Sarvajña-nārāyaṇa*).

If a Son is born to a *Shūdra* from a slave-girl of any kind,—or from a slave-girl related to a slave,—this Son, if permitted by the Father, shall receive a share equal to that of his Sons from his married Wives—(*Kullūka*).

The Son born to a *Shūdra* from a slave-girl, or from the Wife of a slave of his,—that Son, when permitted by the Father, during his life-time, shall receive a share equal to that of his Sons by his married Wives—(*Rāghavānanda*).

The addition of the qualification '*when permitted*' implies that if he is not so permitted, he shall not receive it—(*Nandana*).

'*Dāsyām*'—i.e. from a *Shūdra wife*, married to him.—*Dāsadāsyām*'—the slave-girl belonging to his slave—(*Rāmachandra*).

Yājñavalkya (2.133)—

[1003] 'The Son born to a *Shūdra* from a slave-girl shall receive a share, if the Father so wishes it. On the death of the Father, his Brothers should give him half-a-share.'

That is, if the *Shūdra* has a Son born to him from an *unmarried Shūdra* woman, he obtains a share if the Father so wishes it. If there has been no such wish, the said Son is entitled to a share which shall be half of that of his step-brother—i.e. the Son born to the said Father from his married Wife.

He goes on—

[1004] 'If he has no Brothers, he shall take the entire property, except when there are no Daughter's Sons'—(*Yājñavalkya* 2.134).

That is, the Son of the *unmarried* woman shall take the entire property, only if the deceased has left no Son or Daughter's Son from his married Wife.*

'*Dāsyām*'—from a slave-girl belonging to any of the categories enumerated by *Manu*.—'*Dāsadāsyām*',—from a slave *belonging*—not *married*—to a slave of his.—According to the *Kalpataru*, this means the slave-girl belonging to his servant —(*Vivādaratnākara*, p. 537).

In the case of the *Shūdra*, his Son born from a slave-girl or other woman, not married to him, shall, if permitted by the Father, receive a share equal to that of his other Sons—(*Dāyabhāga*, p. 143).

'*When permitted*'—by the Father—(*Vibhāgasāra* 13.1.1).

* When a man has no Brothers,—and the dead Father has left no Daughters or Daughter's Sons,—he would be entitled to take the whole property.—The mention of the 'Daughter's Son' as providing an exception implies that, of twice-born persons Daughter's Sons inherit the property if there are no Sons—(*Vishvarūpa*).

When '*one has no Brother*',—born of a married Wife of his Father,—and there are no Daughter's Sons,—the said man shall inherit the entire paternal property; in case there are Daughter's Sons, he shall receive only half—(*Aparārka*).

If there are no Sons born from a married Wife, then the Son born of the slave-girl shall inherit the entire property; but only if there are no Daughters born from his married Wives, or Sons of such Daughters. In case these latter are there, the said Son shall receive only half of the property.—The special mention of the '*Shūdra*' in this connection implies that in the case of twice-born persons, Sons born of slave-girls are *not* entitled to either the whole or half of the property, *even if the Father wishes it*; it is his Daughters who receive it; as for the Son in question, he receives only his maintenance—(*Mitākṣarā*).

The slave-girl's Son,—if he has no Brother born of his Father's *married* Wife,—and if there are no Daughters born of his Father's married Wife,—or Sons of such Daughters,—shall inherit the entire property—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

If there is no Son born from a married Wife,—nor Sons of Daughters born from a married Wife,—the Son born from a slave-girl shall receive the entire property of the Father—(*Vivādaratnākara*, p. 538).

'*Abhrātṛkaḥ*'—having no Brother born from the married Wife of his Father.—He shall receive the Father's entire property;—if there are no Daughters born from the Father's married Wife,—or Sons of such Daughters. If these are there, the said Son shall receive only half of the property.—The special mention of the *Shūdra* implies that in the case of twice-born persons, the Son born from a slave-girl cannot, in any case, receive any share in the Father's property; food and clothing would be all that he would receive—(*Madanapārijāta*, p. 659).

One who has no Brother born from his Father's married Wife shall receive the entire property, if there are no Daughter's Sons. In case there is a Daughter's Son, the property shall be divided equally—(*Dāyabhāga*, p. 143).

A Son born to a *Shūdra* from an unmarried woman receives a share if the Father so wishes it; on the death of the Father, he receives a share which is half of what is received by the Sons of the married Wife of the deceased.—'*Duhitṛṇām sutādṛte*'—i.e. if there is no Daughter or Daughter's Son—(*Vibhāgasāra* 13.1-2).

The Father makes the share of the *Shūdra* Son equal to that of the Son of the slave-girl. '*Kāmataḥ*'—i.e.—according to the Father's wish.—'*Duhitṛṇām, etc.*'—If the Daughter's Son is there, then the said Son is to have the same share as that of the Daughter's Son—(*Dāyanirṇaya* 16.2-3).

Gautama (28.45)—

[1005] 'Sons born from Wives married in the reverse order shall be treated like the Son from a *Shūdra* woman.'

That is, if a Son is born to a *Shūdra* or others from a woman of the *Vaishya* or other higher castes,—they should be treated like the *Son of a Shūdra woman,*—i.e. he is to receive something,—in the shape of the plough-share and such things,—to serve as the means of his subsistence. *

Section (L)—Partition among the Sons of Divided Coparceners

'The Son of divided coparceners' is of two kinds:—(*a*) one who was in the Mother's womb at the time of partition, and (*b*) one conceived after partition.—With reference to the former, says *Yājñavalkya* (2.123)—

[1006] '(A) If after partition, a Son is born of a Wife of the Son's own caste that Son shall be entitled to a share;—(B) Or, he shall receive a share out of whatever may be found with the Brothers,—taking into account the subsequent income and expenditure.'

(A) '*Vibhāgabhāk*'—i.e. he becomes entitled to a share in the property.—(B) '*Dṛshyādvā, etc., etc.*'—i.e. out of that property alone which may be *found,*—or out of both what is *found* and what is *not found,*—of the property that had been already received by the Brothers.—'*Income*'—what may have accrued subsequently;— '*expenditure*'—what may have been spent; out of the property that is found, the subsequent accretions should be deducted; and the new-born Son is to get his share out of what remains of the Father's property after the expenses incurred since partition, and keeping out of it, what may have accrued to it, since the last partition.—The two options herein set forth (A and B) relate to two distinct cases—of the Son concerned possessing or not possessing superior qualifications;—so says *Halāyudha.*†

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* The meaning is that the Sons born of the other castes are to be treated like the Son born from a *Shūdra* Wife; i.e. they are to receive mere subsistence; provided they are obedient, like pupils—(*Vivādaratnākara*, p. 537).

The Son born to the *Shūdra* or other castes, from Wives of the *Vaishya* or other higher castes, receives something in the shape of the plough and such other implements necessary for earning a livelihood; just like the Son born (to the higher castes) from a *Shūdra* woman—(*Vibhāgasāra* 13.1-4).

† (A) In a case where the Sons have divided the property during the Father's life-time, before the Mother has passed the child-bearing age,—and a Son is born after the division,—this Son also is entitled to the property; and this could be so only if the 'ownership' of the new-born Son were already in-born in him; otherwise, if 'ownership' were something created by Partition, then the new-born Son could not have any right to the property, as he was not born at the time of the Partition.—Though it is not expressly stated to what share he would be entitled, it is to be understood that it is the Father's share to which he is entitled; as according to *Gautama*, 'the Son born after partition receives the Father's share'.—(B) In case the Father has no property of his own (having reserved no part of the property for himself when he divided it among his Sons), the Son born after partition shall receive his share out of such property as may be 'visible', i.e. found; but with this difference that what may have been earned by those Brothers should be excluded, and account be taken also of what may have been spent out of it;—after this has been done, what remains shall be divided equally among all the Brothers, including the new-born one—(*Vishvarūpa*).

After the property has been partitioned among the Sons,—if a Son be born to the Father of a Wife belonging to the same caste as himself—this Son receives the 'Father's share'. In case there is no 'Father's share', then a share for the said Son shall be found, out of the produce of such lands and other property as may be

found after the partition had been made,—after due account has been taken of 'income and expenditure'—(*Aparārka*).

(A) This text lays down the manner in which share may be allotted to the Son born after partition.—After the Sons have become separated from the Father, if a Son is born to the latter from a Wife belonging to the same caste as himself, this Son 'shall receive a share'. In the compound '*vibhāgabhāk*', the term '*vibhāga*' stands for *what is divided*,—i.e. the Property; and what the Son in question 'receives' ('*bhāk*') is the '*vibhāga*', Property, *of the parents*.—But the Mother's share he shall receive only if there is no Daughter [*no Daughter or Daughter's Son*, according to the *Subodhinī*; *no Daughter of the same caste as the Father*, according to *Bālambhaṭṭī*]. —If the Son in question is born of a Wife belonging to a caste different from the Father's, he receives only his own share out of the Father's share, but the Mother's share he receives entire—but only if the Mother has left no Daughter or Daughter's Sons. This is what has been declared by *Manu* (9.216). Whatever has been acquired by the Father after the Sons have become separated shall go in its entirety to the Son born after the separation, as laid down in the Text '*Putraiḥ saha vibhaktēna, etc.*' (*Bṛhaspati* 25.19).—In case the separated Sons have become *re-united* with the Father, then after the Father's death, the 'Father's property' shall be shared with those by the Son born after the former partition; as declared by *Manu* in 9.216— (B) The second line lays down the rule regarding the case where a Son is born after the existing Sons have divided the property among themselves on the Father's death. The word '*tadvibhāgaḥ*' means the '*vibhāga*', *share*, of the Son born after partition among the Brothers.—'From where would this share come?'.—*Answer*— '*Dṛshyāt*', 'from out of *what is found*'; i.e. out of the property inherited by the Brothers,—such of this property as *may be computed after taking into account the income and expenditure*. '*Income*' stands for the daily, monthly or yearly produce; and '*expenditure*' for the repaying of the Father's debts;—what remains of the property after these two items have been taken into account,—out of that, his share is to be given to the Son in question. That is to say, the Brothers shall add to their individual shares all the income that may have accrued to each of them since partition,—then they shall pay all the debts left by the Father,—then each of them shall contribute a part of his share and thereby make up a share for the Brother born after the partition, which should be equal to their own individual share.—This same rule applies to the case where one of the Brothers, who had no children at the time of the partition, has a Son born to him (*after his death*—adds the *Bālambhaṭṭī*) from his Wife in whom signs of pregnancy were not perceptible before his death. In cases where such signs have been perceptible, the partition should be postponed till delivery takes place; as has been declared by *Vashiṣṭha* (17.41)— (*Mitākṣarā*).

On this, the *Bālambhaṭṭī* has the following notes—Some digest-writers have explained the second sentence (B) as setting forth an optional alternative to what has been said in the preceding sentence (A); others again have construed the two sentences together. Neither of these explanations is right. That is why the *Mitākṣarā* has taken the two sentences entirely separately:—the first sentence pertaining to cases where the partition has been done *during the Father's life-time*, and the new Son has been born after that partition; while the second sentence pertains to cases where the partition has been *after the Father's death*, and the Son has been born after that partition.—'*Income*' stands for the profits that each Brother may have made after the partition, over his own share of the property, by means of Agriculture and other methods; and '*expenditure*' stands for the payment of such debts as the Father had incurred in the maintaining of the family.—A further explanation has been added (by the *Mitākṣarā*) with a view to preclude the meaning that the 'income' and the 'expenditure' are to be excluded from the property to be shared by the new-born Brother. Each Brother shall give out of his share what may be proportionate to his share at the time.—What is meant is as follows:— Though the Father's property had been partitioned, yet (by reason of the birth of the new Brother), it should be treated as *not-partitioned*; in view of the fact that that the child in the womb, by virtue of being the Father's child, was as much entitled to a share in his property as the other Sons; hence, if it was in the Mother's womb at the time of the Father's death and was born subsequently, it is entitled to share his property and in the profits accrued to that property. If the child is a *male* one, its share shall be equal to that of each of the other Sons; and if it is *female*, it shall receive a quarter of such share—(*Bālambhaṭṭī*).

This text lays down the rule regarding the share of the Son born after partition. —(A) After the Sons have been divided, if a Son is born to one, from a Wife belonging to the same caste as himself, he receives a share,—i.e. proper share—out of the

entire property that has been already divided among the Brothers,—after deducting from it the accretions to it (since partition) and the expenses incurred out of it.—(B) In case the Son born after partition is entirely devoid of good qualities, then he shall receive a share only out of what may be 'visible', in the shape of cows, buffaloes and the like; after taking into account the accretions and the losses.—It might be argued that, in accordance with *Nārada's* text, there should be no partition while there is any likelihood of a Son being born; how then could there be any Son *born after partition*?—But what is asserted by *Nārada* is often set aside by the strong desire of the Father to divide the property among his Sons.—If this were not so, then the present text of *Yājñavalkya* would have no sense at all.—In fact, the present text refers to cases where the child has been already in the womb at the time of partition. In regard to the Son *conceived* after partition, we have the rules laid down by *Manu* 9.216 and others—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

This text, as also Viṣṇu's text—'*pitṛvibhaktā*, etc. etc.' (Text No. 1005), refers to the case of a Son who was in the womb at the time of partition and was born *after* the partition; and the meaning is that such a Son should be given his share made up of something given out of his own share by each of the Brothers among whom the property has been divided.—A Son other than the said one (i.e. one who is born after partition), shall receive the Father's share, as declared by *Manu* and others; and this declaration refers to the Son whose conception (presence in the womb) was not definitely known at the time of partition; because in cases where signs of pregnancy are distinctly perceptible, there can be no partition (till delivery takes place). So says the Author of the *Prakāsha*.—*Halāyudha*, quoting this text of *Yājñavalkya*, after that of *Viṣṇu* (No. 1005), says—what is meant is that in case the Son born after partition from the Wife of the same caste as oneself is endowed with good qualities, he receives his due share out of the whole of the partitioned property,—what is *visible* and what is *not visible*—if, on the other hand, he is devoid of good qualities, then he receives his share only out of what is *visible*—'*dṛshyāt*', in the shape of *grains* and such things, produced from the lands; after deducting the debts incurred by the Brothers—(*Vivādaratnākara*, pp. 539-540).

This refers to cases where a Son has been born after the partition is made after the Father's death. During the Father's life-time, signs of pregnancy were not clearly discernible in the Mother; after the Father's death, when the Sons have divided the property among themselves, a Son is born to the Mother; this Son is entitled to a *share*,—'*vibhāga*' is the same as '*bhāga*'; that is, he receives a share made up of portions taken from the property already partitioned;—or he shall receive his share 'out of what is visible',—i.e. such property as household-utensils, conveyances, milch cattle, ornaments, slaves and so forth; the exact extent of these being determined by taking into account the accretions and the losses. The term 'visible', '*dṛshya*', serves to preclude the assigning of his share out of such articles as may be *hidden*.—Though the Son born after the partition is as good a Son as the others, yet, in as much as his existence could not be known at the time of partition, it is only fair and equitable that there should be a slight diminution in the share allotted to him. It is in view of this that the second alternative (B) has been set forth.—At the same time, as the fact of his existence not being known at the time of partition was not due to any fault of his own, there is no great impropriety in the first alternative (A) either—(*Smṛtichandrikā*, pp. 711-712).

This refers to ancestral property—(*Dāyabhāga*, p. 132).

(B) In the compound '*tadvibhāgah*', the pronoun '*tat*' stands for the Son born after partition;—'*vā*' means '*ēva*'; his share shall come out of *that only* which is '*dṛshya*', *visible*,—and which is '*āyavyayavishodhita*';—'*āya*' stands for the profit that has accrued to the share of each Brother through his agricultural and other operations; '*vyaya*' for such necessary items of expenditure as the payment of the Father's debts, the maintenance of the Household and the like.—Thus the meaning is that the profits shall be added to, and the expenditure deducted from, the property inherited by the Brothers, and then each of the Brother shall give, out of his share, a proportionate part, in such a way as to provide for the new-born Brother a share equal to that of each of them.—In cases where, in the Mother or the Sister-in-law, signs of pregnancy are already perceptible, the partition has to be postponed till the delivery—(*Madanapārijāta*, p. 656).

(A) The first sentence lays down the method of apportioning the share of the Son that may be born after partition. The meaning is as follows:—After the Sons have divided the property, if a Son is born of the Wife belonging to the same caste as the Husband, he receives the share of his parents; the Mother's share going to him only if she has no Daughters.—If the Son born after partition is from a Wife of a different caste, he receives only his own share out of the Father's share (not the

Viṣṇu (17.3)—

[1007] 'Those who have become separated from the Father shall give a share to the Son that may be born after the partition.'

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whole), but of the Mother's property, he receives the whole, provided there is no Daughter.—The qualification 'of the same caste' implies that, if the Son is born of the Wife of a different caste, he receives only his own share out of the Father's property; but of the Mother's property, he gets the whole, if there is no Daughter.—(B) In the second sentence, what is meant is that—in cases where, after the Father's death, his property has been divided by the Sons among themselves,—and after that a Son is born of a Wife of their Father's in whom signs of pregnancy were *not* discernible at the time of partition,—his share shall consist of what the Brothers give him out of the property inherited by them, as determined after accounting for the accretions and deductions during the interval—such share being equal to their own individual share.—This same rule applies also to the case of the posthumous Son being born of the Sister-in-law in whom signs of pregnancy had not been discernible at the time of partition. In cases where such signs are clearly discernible, the partition has to be postponed till the child is born—(*Parāsharamādhava*, pp. 339-341).

(A) *Yājñavalkya* lays down the method of apportioning the share of the Son born after partition. When the Sons have become separated, either by their Father's or by their own wish, *during the life-time of the Parents*,—if another Son is born to the Father from a Wife of the same caste as himself, that Son is entitled to a share;—'*vibhāga*' is *share*, of the Parents,—and this goes to the said Son; but the *Mother's* share goes to him only if there are no Daughters.—The qualification 'of the same caste' implies that if the Son is born of a Wife of a different caste, he receives only his own share *out of* the Father's share, but of the Mother's property, he gets the whole, if there is no Daughter.—(B) In the second sentence what *Yājñavalkya* means is that,—in cases where, *after the Father's death*, his property has been divided by the Sons among themselves,—and after that a Son is born to a Wife of their Father in whom signs of pregnancy were not discernible at the time of partition,—each of the former Sons shall give—out of the property inherited by them, as computed in accordance with the income and expenditure since the partition,—to that new-born Son, enough to make his share equal to their own.—'*Dṛshyāt*'—out of what has been inherited by the Sons.—'*Āya*' the daily, monthly and yearly income that has accrued to the property;—'*vyaya*'—*expenditure*, incurred in the paying of the Father's debts and in the marriage of the Sisters; the fulfilment of these two liabilities being a duty incumbent on *all Sons*;—the 'expenditure' meant here cannot be the expenses incurred by the Brothers on their own account; as such expenditure can have no bearing upon the point at issue;—out of the Father's property, which has been '*vishodhita*'—fairly computed,—in view of the said income and expenditure, the newly born Son is to receive a share equal to the share of each of the other Sons.—What is meant is that the profits that may have accrued to the share of each of the Brothers shall be added to the Father's property, —the amount spent over the necessary liabilities shall be deducted from it—and out of the property thus computed, each Brother shall give out of his share to the new-born Brother, enough to make his share equal to their own.—The particle '*vā*' in the second sentence indicates that this sentence puts forward a second option; but an option only in the sense explained above.—*Halāyudha* has explained '*dṛshyāt*' as *such property as is visible*, and not *hidden*,—and has explained that the second sentence pertains to cases where the Son born after the partition is possessed of qualities that are inferior to those possessed by the other Sons.—But this view is not correct—(*Vīramitrodaya*, pp. 589–592).

This refers to cases where, after the partition made after the Father's death, a Son is born to the Mother or her Co-wife, or of the Brother's Wife,—in whom signs of pregnancy were not discernible at the time of partition.—The share of this Son is to be made up by each of the Brothers giving a portion out of his share in such a way as to make the share of the new-born Son equal to their own individual shares—(*Vyavahāramayūkha*, p. 105).

What is meant is that, if a Son was in the womb at the time of partition, and is born subsequently,—he also is entitled to receive a share;—'*āyavyayavishodhitāt*', —computed by taking into account the income and the expenditure; i.e. he receives his share in the property, from what remains of it after such computation.— '*Dṛshyād vā*'—i.e. out of what is *visible* as well as what is *not visible*,—both kinds of

The meaning of this is the same as that of the preceding text.*

In regard to the second kind of *Son born after Partition* [i.e. one who was *not* in the womb at the time of Partition], says *Manu* (9.216)—

[1008] (A) 'If a Son is born after partition, he shall receive the share of the Father only.—(B) If any be reunited with him, he should share it with them.'

(A) What is indicated by the particle '*ēva*', '*only*', is that the new-born Son spoken of here does not receive his share out of the share of his Brothers, —as is done by the Son who had been in the womb (at the time of partition), —what he receives is only the Father's property.—In regard to this also there is a further peculiarity: If the Son in question is desirous of having his share while the Father is still alive, and the Father also is agreeable to this division,—then the Father's share in the property should be divided into two parts,—one for the Father and one for the Son born after partition. On the death of the Father however, his entire property goes to the said Son born after partition.—(B) In case the Father has become 'reunited' with his Brother, or with his Son (who had become separated),—and then dies,— the new-born Son obtains the Father's share (in this reunited joint property).

[This same text is quoted and commented upon in Section (1) where the explanation is—'If having been asserted that the new-born Son alone is *entitled* to inherit the property, the meaning of the second line must be that it is only when *there is no new-born Son* that the reunited Son can inherit the Father's share.†

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what they had got at the partition.—'*Āya*' is *income, accretion*; '*vyaya*', *expenditure, diminution*.—Hence, he shall receive his share out of what remains after the paying off of the liabilities,—but *not* including in it anything that may have *accrued* to it since the partition.—According to *Halāyudha*, the two optional alternatives are in reference to the freedom being endowed or not endowed with superior qualifications —(*Vibhāgasāra* 13.1–6).

* The divided Sons shall make good the share of the Son who was in the womb at the time of the partition,—irrespectively of the fact of the pregnancy being known or unknown to people—(*Vivādachandra* 20.1–8).

(See notes on preceding text, for notes from *Vivādaratnākara*.)

This text refers to the Son born after partition made during the Father's life-time.—In a case where the Sons have become separated from the Father,—and after this partition another Son is born to the Father of his Wife in whom signs of pregnancy were not discernible at the time of partition,—the former Sons shall give to this Son his share which, by reason of their ignorance of his existence (in the Mother's womb), become included in their own.—The Father need not give him the share that is contained in the share retained by the Father for himself; but he shall continue to live with the new-born Son,—having received, on behalf of this Son, his share given by his elder Brothers; because this Son would require to be looked after during his minority.—This is the reason why the Text declares that '*those separated from the Father should give*', and *not* that '*the Father and those separated* from him should give'—(*Smṛtichandrikā*, p. 709).

If the land and other ancestral property have been partitioned, then the new-born Son shall receive his share of that property from his Brothers—(*Dāyabhāga*, p. 131).

If, by chance, the ancestral property has been partitioned before the Mother has passed the child-bearing age,—then what is declared in the present text is to be done.—This does not refer to the Father's self-acquired property; as if it did, it would be inconsistent with *Bṛhaspati's* text by which the Father's share goes entirely to the new-born Son (vide Text No. 1008 below)—(*Vyavahāramayūkha*, p. 105).

† (A) After the partition has been made,—in which the Father has taken two shares for himself,—if a Son happen to be born, he shall receive these two shares, during the Father's life-time,—if the Father so wishes—or after the Father's death; and his elder Brothers shall not complain as to why he should have *two* shares. If, however, such is not the Father's wish, then he shall be assigned a share equal to their own.—(B) In case the separated Sons of the Father become 'reunited' with him, after the partition has been made, then the Father's share, on his death, shall go to them, and the additional property accruing therefrom shall be assigned

Bṛhaspati (25.17)—

[1009] 'When half-brothers or uterine Brothers have become separated from the Father,—the Sons born subsequently shall receive the Father's

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by them as the share of the new-born Brother. This property thus devolves upon the Son, and after the Father's death, he receives his share out of that same property, in accordance with what has been declared by *Manu* under 9.210—(*Medhātithi*).

(A) '*Of the Father alone*'—This implies that at the partition, during his life-time, the Father has to have a share for himself. If several Sons are born after the partition, that same 'Father's share' shall be divided among all of them.—(B) If some of the Sons become 'reunited' with the Father, then, as their property shall have become merged in the Father's property, that whole property shall be divided among all the Brothers—(*Sarvajñanārāyaṇa*).

(A) Where, at the wish of the Sons, the Father has made a division of the property during his life-time,—if another Son is born to him after that division,—this Son, on the Father's death, shall receive only what belonged to the Father.—(B) In case the separated Sons have become 'reunited',—and their properties amalgamated with the Father's,—then the said Son shall share that amalgamated property with the reunited Sons—(*Kullūka*).

In all cases where the division of the property has been made by the Father,—if a child is born after the division,—then, on the Father's death, he shall receive the property that had fallen to the share of the Father at the time of the partition.—(B) If some of the separated Sons have become 'reunited' with the Father, the Father shall divide his property equally among those and the new-born Son. In a case where the Mother has evinced signs of pregnancy before the Father's death, if there is no 'Father's share' that could go to the posthumous Son, the other Sons, even though separated, shall provide a share for him—(*Rāghavānanda*).

He shall receive *only* the Father's share, and he shall have no share in the property assigned to the other Sons. An exception is added—In the event of some Sons having become 'reunited' with the Father, the new-born Son shall share the united property equally with them—(*Nandana*).

If the Sons have become 'reunited' with the Father, he shall share his property with them—(*Rāmachandra*).

'*Pitryam*'—'*pitroḥ idam*', 'belonging to the *Parents*'; which would be in keeping with another text which declares that 'the Son born *before* partition is not entitled to the share of the Parents, and the Son born *after* partition is not entitled to the share of the Brothers'.—If certain Sons, who had become separated from the Father, have become reunited with him, then, after the Father's death, the Son born after partition shall share it with those reunited Sons—(*Mitākṣarā*, pp. 651-653).

The Son born after the partition shall take only the Father's share, not the share of the Brothers.—In the absence of the Father and other Brothers, the said Son shall share the property with the 'reunited' Brothers. [No significance attached to the singular number in '*Jātaḥ*' [i.e. even if there are *several* Sons thus born, the same rule is applicable]—(*Aparārka*, p. 729).

'*Pitryam*'—what belongs to the *parents*.—If some Sons who had become separated from the Father, had become 'reunited' with him, then the Son born after partition shall share the property with them—(*Madanapārijāta*, p. 655).

After the Sons have become separated from the Father, if a Son is born, this Son shall receive the entire share of the Father, after his death; while during the Father's life-time, he shall receive only a part of the Father's share. The particle '*ēva*' implies that he shall receive nothing out of the shares of the separated Brothers—(*Vivādaratnākara*, p. 538).

Those born after the partition are entitled to the Father's share only, and the other Sons shall have no share in that share. If, however, a separated Son had become 'reunited' with the Father, then, in that case, the Son born after partition shall share the Father's share with that 'reunited' Son—(*Vivādachandra* 20.1-8).

The particle '*ēva*' indicates that if the Son has been in the womb at the time of partition, he receives his share out of the shares of his Brothers; but if his *conception* has taken place after the partition, then he receives *only* that which had fallen to the share of the Father—(*Vibhāgasāra* 13.1-10).

In a case where the Father and Son have become reunited after partition,—if there is another Son still separated from the Father,—and no other Son is born after the said 'reunion',—then the whole property of the Father shall go to the 'reunited' Son, not to the Son who has remained separated—(*Dāyanirṇaya* 22.1-5).

share. The Son *born* before (partition) has no right over the Father's share; and the one born *after* partition has no right over the share of the Brothers.'

[*Second half quoted again as Text No.* 1067 *below.*]

'*The Sons born subsequently*'—(i.e. conceived *before*, but born *after*, the partition)—receive only the Father's share,—just like those (conceived as well as) born to the Father after he has been separated from the other Sons. —'*The Son born after partition has no right, etc. etc.*'—that is, the Son born *before* partition and the Son born *after* partition are equal [in the sense that the former does not share the Father's property and the latter does not share the Brothers' property].*

'*Pitryameva*', 'of the Father alone', has to be construed with the second sentence also. Hence there is no inconsistency with what has been said before. This rule refers to the case where the Father has died while living conjointly with the Son born after partition—(*Smṛtichandrikā*, p. 711).

If the separated Sons become 'reunited' with the Father, they are entitled to share the Father's property with the Son born after the previous partition—(*Parāsharamādhava*, p. 340).

The Father has divided the Sons, retaining for himself the share ordained in the Scriptures,—and then he dies, while living apart from his Sons; in this case, the Son that may have been born after the said division shall receive the Father's whole share, as his own.—In a case where the Father has died after being 'reunited' with some of his separated Sons, the Son born after partition shall give shares in the Father's property to those 'reunited' Sons—(*Dāyabhāga*, p. 130).

In cases where the Father has made the partition during his life-time, the Son born after that partition,—if born from a Wife of a different caste,—receives only that to which his caste entitles him, not the entire share of the Father.—'*Pitryam*' is 'the property of the *Parents*'; it is this alone that the Son shall take, in accordance with the rule relating to Sons of different castes.—The particle '*ēva*' implies that his Brothers are *not* to extract parts of their shares, others make up his share for him equal to their own.—If some of the Sons, after separating from the Father, have become 'reunited' with him, then, the Father's share shall be shared with these, and the whole of it shall not be taken by the new-born Son—(*Vīramitrodaya*, pp. 590-591).

If any Son becomes 'reunited' with the Father, then the property shall be shared with him—(*Vyavahāramayūkha*, p. 104).

* The right reading is '*Pūrvajaḥ vibhaktājashcha sama ityarthaḥ*'.

The meaning of the second sentence is that the Son born before partition has no right over the property of the parents, from whom they have separated; and the Son born after partition has no right over the share of the elder Brother—(*Mitākṣarā*, p. 653).

If the share of the previously-born Sons happen to be large, and that of the subsequently-born ones small,—consisting as the latter does of the Father's share divided among them,—even then, the latter are not to receive anything out of the share of the Brothers previously separated—(*Aparārka*, p. 729).

'*Pūrvajaḥ*'—one born *before* partition; i.e. one who has become separated from the Father,—'has no right' over the Father's share; and the '*vibhaktajaḥ*', Son born to the Father after his separation from the elder Son, 'has no right' over the Brother's share—(*Vivādaratnākara*, p. 538).

The word '*pitṛbhāgaharāḥ*' means 'having a share only in the Father's share'. This refers to those whose conception has taken place after the partition. The third line provides the reason for what has been asserted regarding the subsequently-born Son receiving a share in the Father's share *only*: '*Anīshaḥ*'—having no right. The sentence '*anīshaḥ pūrvajaḥ pitryē*' should be understood to mean—'because they have been separated from the Father'; and the phrase '*bhrātṛbhāgē vibhaktajaḥ*' to mean—'because the property of the Son born after partition did not enter into the property of the Brothers'—(*Smṛtichandrikā*, p. 710).

'*Pūrvajaḥ*'—one born before partition, who has already got his share out of the Father's property; the Son born *after* partition also 'has no right' over the share of the Brother. The last sentence provides the reason for what has gone before—(*Vīramitrodaya*, pp. 590-591).

Again—

[1010] 'The property that has been acquired by the Father himself after being separated from his Sons goes entirely to the Son born after that separation; those born before have been declared as having no right over it.—As in regard to the Property, so also in regard to Debts, Gifts, Pledges, and purchases, they have no concern with each other; barring impurity and water-offerings.'

(*a*) If a Son was in the womb at the time of separation (Partition),—and was born after the partition,—the share of such a Son should be made up by the divided co-sharers out of their own respective shares;—(*b*) any other Son that may be born to the Father after his separation from his Sons (who was not already in the womb at the time of the partition), is entitled to the Father's own share only;—that such is the opinion of *Manu* and others is clearly established.*

SECTION (M)—SONS—DIFFERENT VARIETIES

Says *Yama*—

[1011] 'The wise sages have spoken of twelve Sons; of these, six are "Kinsmen" and "Heirs",—and six are "Kinsmen", not "Inheritors". (1) The first is *One Begotten by Oneself*, (2) the second is the *Soil-born*, (3) the third is the *Son of the Appointed Daughter*—so say people versed in Law; (4) the fourth is *One Begotten of the Remarried Woman*; (5) the fifth is the *Maiden-born*; (6) *One Born Secretly in the house*;—these six have been declared to be *offerers of the Cake*.—(7) the *Cast-off*, (8) the *One Received with the Bride*, (9) the *Adopted*, (10) the *Appointed*, (11) the *Bought* as the fifth, and (12) the *Self-offered*;—these Nature-born Sons are *Kinsmen*, not *Inheritors*.'

And *Nārada*—

[1012] (1) 'The Body-born, (2) the Soil-born, (3) the Son of the Appointed Daughter, (4) the Maiden-born, (5) One Received with the Bride, (6) the

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'*Jaghanyajaḥ*'—Like the Son born after partition this Son also receives only the Father's share.—'*Anīshaḥ pūrvajaḥ*',—i.e. if he has been separated from the Father—(*Vibhāgasāra* 13.1–11).

* Whatever has been acquired by the Father after partition,—all that goes to the Son born after partition—(*Mitākṣarā*, p. 653).

The term '*sarvam*', 'entirely', implies that, even when the Father has acquired a very large property, it shall go to the new-born Son.—The declaration that they are concerned with each other only in regard to 'impurity and water-offerings' serves to preclude all title to property.—This applies only to the Father's self-acquired property—(*Dāyabhāga*, p. 131).

The term '*sarvam*', 'entirely', is meant to preclude the notion that—'inasmuch as the elder Sons have had no share in the property subsequently acquired by the Father, they should share in it'.—The elder Brothers and the new-born Son would have no rights over each other's property, and they would be like strangers,—with this little difference that they *would* be concerned with each other, in regard to 'impurity' (relating to Deaths and Births) and 'water-offerings',—not in regard to *property*.—'*Ādhāna*' is *pledge*—(*Smṛtichandrikā*, pp. 710-711).

Unless the new-born Son receives a share from the previously-separated Sons, he shall not be liable to pay the debts—(*Vyavahāramayūkha*, p. 104).

The property that the Father may have acquired after the partition,—that also goes only to the Son born after the partition—(*Vīramitrodaya*, p. 590; also *Parāsharamādhava*, p. 340).

Secretly Born, (7) the Begotten of the Remarried Woman, (8) the Cast-off, (9) the Adopted, (10) the Bought, (11) the Appointed, and (12) the Self-offered;—these have been declared to be the twelve Sons.—Among these, six are "Kinsmen" and "Inheritors", and six are "Kinsmen" not "Inheritors".—Each preceding one is held to be *Senior*, and each succeeding one *Junior*. On the death of the Father, these succeed to his property in due order,—the Junior one receiving it in the absence of the Senior.'

That is, the succeeding one is entitled to inherit the property only in the absence of the preceding one.

Manu (9.158–160)—

[1013] 'Among the twelve kinds of *Sons* that *Manu Svāyambhuva* has mentioned, six are "Kinsmen" as well as "Inheritors", and six are "Kinsmen", not "Inheritors".—The Body-born, the Soil-born, the Adopted, the Appointed, the Secretly Born, and the Cast-off,—these six are "Inheritors" as well as "Kinsmen". The Maiden-born, the One received with the Bride, the Bought, the Begotten of the Remarried Woman, the Self-offered and the *Shūdrā*-born,—these six are only "Kinsmen", not "Inheritors".' *

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* The term '*bandhu*' here stands for the *Bāndhava*, Kinsman.—These take the *Gotra* as well as the Property. The reverse of this are the latter six.—Those that have been described as 'not heirs' are so only in the presence of the *Body-born* (legitimate) Son; and all that is meant by the distinction is that the first six are larger beneficiaries than the second six. Among the first group, all except the Body-born are equal beneficiaries, and less than these are the second group of six; all these of the latter group are equal, and there is no difference among themselves, due to their being mentioned earlier or later in the list—(*Medhātithi* on 9.165).

'*Dāyāda*', inheritor of the property of *Bandhus*,—paternal uncle, etc.—in the absence of their direct heirs,—i.e. Son, Wife, Daughter and so forth.—The second group of six are *not dāyāda*,—i.e. not inheritors of the property of the uncle and others,—even when these latter have no Son or other heirs, their property will go to the *Sagotras*, not to the second group of 'Sons'.—'*Kinsmen*' are liable to make the water and other offerings. These six are '*neither Heirs nor Kinsmen*'; the compound '*adāyādabāndhavāḥ*' being expounded as '*adāyādāḥ*' (not Heirs) and '*abāndhavāḥ*' (not Kinsmen)—(*Sarvajñanārāyaṇa*).

Among the twelve Sons enumerated by *Manu*, the first six are 'Kinsmen', as also 'partakers of the *Gotra* and the *property*'; and being 'Kinsmen', they offer water and cake to *Sapiṇḍas* and *Samānodakas* of the Father, and also take his property. That they inherit property is going to be declared later on.—The second set of six do not take the *Gotra or property*; they are only 'Kinsmen', and as such perform the duty of 'Kinsmen' in offering water, etc.—It is not right to regard the second set as '*neither* Kinsmen *nor* Heirs' (as *Sarvajñanārāyaṇa* has done); as they have been distinctly called '*bandhus*' (Kinsmen) by *Baudhāyana* who calls them '*gotrabhājaḥ*' (taking the *Gotra*)—(*Kullūka*).

'*Bandhudāyāda*'—those who take the *Gotra*, offer the cake and water and inherit the property.—'*Adāyādabāndhava*',—those who do not receive the property, but, like *Kinsmen*, confer upon the Father the benefit of offering water—(*Rāghavānanda*).

Manu divides the Sons into two categories—(*a*) '*bandhudāyāda*', and (*b*) '*adāyādabāndhava*'—the latter term negatives both characters; those who belong to this second category are *neither* 'Dāyāda' *nor* 'Bāndhava'. Some people have held that it is only the '*dāyāda*' (Heirship) that is negatived, not the '*bāndhava*' (Kinsmanship)—(*Nandana*).

The five Sons—Soil-born, Adopted, Appointed, Secretly Born, and Cast-off—receive their share also when the Body-born Son is there; while the Maiden-born and the rest get it only when the preceding ones are not there—(*Vishvarūpa* on *Yājña.*, p. 249).

Baudhāyana—

[1012] 'The Body-born, the Son of the Appointed Daughter, the Soil-born, the Adopted, the Appointed, the Secretly Born and the Cast-off,—these they declare to be *Partakers of the Property.* The Maiden-born, One Obtained with the Bride, the Bought, One Born of a Remarried Woman, the Self-offered and the *Niṣāda* (the *Shūdrā*-born),—these they declare to be *Partakers of the Gotra.*'

After having named (1) the Body-born, (2) the Son of the Appointed Daughter, (3) the Soil-born, (4) the Maiden-born, (5) the Secretly Born (6) the Cast-off, (7) the One Obtained with the Bride, (8) the Son of the Remarried Woman, (9) the Adopted, (10) the Self-offered, (11) the Appointed and (12) the Bought,—*Dēvala* continues—

[1013] 'These are the twelve Sons that have been declared to serve the purpose of propagating the race; some of them are born of one's own self, some born of others, some acquired and some obtained by chance.—Among these the first six are Kinsmen and Inheritors, while the others belong to the Father alone. There is also a distinction made among these Sons on the basis of the order in which they are mentioned.—All these have been declared to be the Inheritors of the property of the Father who has no Body-born Son.—The seniority of those others ceases as soon as the Body-born Son is born.—Among the Sons, those that belong to the same caste as the Father are entitled to the third part of a share; those belonging to lower castes shall live under the said Son, being supported with food and clothing.' *

What is meant is that when the Father's *Sapiṇḍas* or *Samānodakas* die without leaving a nearer heir, their property goes to the first six, not to the second six; but '*bāndhavatva*', 'kinsmanship'—which consists in liability to make the water and other offerings, either through *Sagotra* or *Sapiṇḍa* relationship, belongs equally to both the sets.—As regards the Father's property, they are all entitled to inherit it, as is clear from *Manu* 9.185. Therefore, the term '*dāyāda*' in the text cannot mean 'heirs' *to the Father's* property; specially because it is well known that it always means Inheritors to the property of persons *other than the Father*—(*Mitākṣarā*, pp. 703–710).

The liability to make the water and other offerings—due to *Sagotra* and *Sapiṇḍa* relationship,—belongs to both groups. As for inheriting the Father's property, all the Sons are entitled to it, in the absence of those preceding them in the list—(*Parāsharamādhava*, p. 349).

The distinction made between the two groups is in regard to being the '*dāyāda*' (Inheritor of property) and '*bandhu*' (kinsman, liable to offer water, etc.) to the *Sapiṇḍas* and *Samānodakas* of the Father to whom the Sons belong, and what is meant is that so far as *Kinsmanship*—liability to offering water, etc.—is concerned, it rests in all the twelve; but so far as inheriting property—being '*dāyāda*'—is concerned, it rests in the first six only, not in the second six. The distinction does not appertain to the Father's property; *Yājñavalkya* (2.133) and *Manu* (9.185) have both clearly stated the title of *all* the secondary Sons to inherit the Father's property.—Further, the term '*dāyāda*' is mostly used in the sense of persons inheriting the property of persons other than the Father—(*Vīramitrodaya*, p. 619).

* The six Sons—Body-born and the rest—are partakers of the property,—not only of the Father, but also of *Sapiṇḍas* and other Kinsmen; while the others inherit the property of the Father only, not of *Sapiṇḍas* and others. And of the Father's property, they receive the wider, if there is no Body-born Son. If there *is* a Body-born Son, then they,—if of the same caste as the Father,—are entitled to the third part of a share—(*Dāyabhāga*, p. 147).

Having mentioned the Body-born, the Soil-born, the Son of the Appointed Daughter, the Son of the Remarried Woman, the Maiden-born, the Secretly Born, the One Obtained with the Bride, the Adopted, the Bought, the Self-offered and the Cast-off—irrespective of where they have been born,—*Viṣṇu* says—

[1014] 'Among these, each preceding one is superior to the succeeding one; he alone shall take the Inheritance; and he will support the others.'

That is, the order is as follows:—the *first* is the Body-born Son,—the *second*, the Soil-born Son,—the *third*, the Son of the Appointed Daughter,—the *fourth*, the Son of the Remarried Woman,—the *fifth*, the Maiden-born, the *sixth*, the Secretly Born,—the *seventh*, the Son Obtained with the Bride,—the *eighth*, the Adopted,—the *ninth*, the Bought,—the *tenth*, the Self-offered,—the *eleventh*, the Cast-off,—the *twelfth*, the *Pārashava*.—Others place the *Appointed* as the *twelfth* and the *Pārashava* as the *thirteenth*.*

In regard to disputes arising regarding the claims of these *Viṣṇu* says—

[1015] '[The Sons are] Body-born, Soil-born, Son of the Appointed Daughter, Secretly Born, Maiden-born, Born of a Remarried Woman, Adopted, Bought, Appointed, Self-offered, Obtained with the Bride and the Cast-off;—among these, each succeeding one offers the cake and inherits the property in the absence of the preceding one.'

Yājñavalkya (2.128–132)—

[1016] '(1) One born of the lawful Wife is the *Body-born Son*; (2) Equal to him is the *Son of the Appointed Daughter*;—(3) that born in one's own "Soil", through a *Sagotra* or another person, is the *Soil-born Son*;—(5) that born secretly in the house is the *Secretly Born Son*;—(5) that born of an unmarried girl is the *Maiden-born Son*, who belongs to his maternal grandfather;—(6) that born from a Remarried Woman, either a virgin or otherwise, is the *Son Born of a Remarried Woman*;—(7) one whom the Father or Mother has given away is the *Adopted Son*;—(8) that sold by the parents is the *Bought Son*;—(9) that appointed by oneself is the *Appointed Son*;—(10) one who has offered himself is the *Self-offered Son*; (11) one who was obtained in the womb

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'*Anaurasa*'—one who has no Body-born Son.—'*Ātmajāḥ, etc. etc.*'—Among the *Sons* enumerated, which one comes under which category will be clear from the definitions provided (by *Yājñavalkya*, for instance)—(*Vīramitrodaya*, p. 620).

This refers to all the twelve kinds of Sons.—'*Dāyaharāḥ*'—entitled to the full share.—Among the Sons besides the Body-born, those who belong to the same caste as the Father receive a third part of the share if the Body-born Son is there—(*Smṛtitattva* II, pp. 168-169).

'*Inheritors of the property*'—i.e. entitled to full shares; those of them who are not of the same caste as the Father are entitled to a share equal to the third part of the share of the Body-born Son.—'*Among these, the first six, etc. etc.*';—the first six inherit the property, not only of the Father, but of all *Sapiṇḍas* also,—while the latter six inherit the property of the Father and Mother only.—The order of succession on this point is briefly as follows:—(1) the Body-born Son, (2) the Son of the Body-born Son, (3) the Grandson of the Body-born Son, (4) the Son of the dead Son, the Grandson of the dead Son, (5) the Appointed Daughter, (6) the Grandson of the Appointed Daughter.—If a Body-born Son is Son after the 'appointment' of the Daughter, that Son and the Appointed Daughter receive equal shares. In the absence of all these, the property is to go to the Soil-born and other Sons—(*Dāyanirṇaya* 4.1–9).

* *Vibhāgasāra* (14.1–5) has the same order; but at the end it adds—this opinion of others cannot be right, as *Manu* has declared the number of Sons to be *twelve* only.

is the Son *Obtained with the Bride*;—(12) one who, on being abandoned (by the parents) has been taken up is the *Cast-off Son*.—From among these, the funeral cake shall be offered, and the property inherited, by each succeeding one in the absence of the preceding one.'

'*Dharmapatnī*', 'Lawful Wife', is the properly married Wife of the same caste as oneself;—the Son begotten by one on such a Wife is the *Body-born* Son; the definition of this Son being 'one who is begotten by one's own properly married Wife of the same caste'.

(2) The second is the *Son of the Appointed Daughter*, '*Putrikāputra*'.

(3) The third is the *Soil-born* Son.—This Son belongs to the owner of the 'Soil' (i.e. the Husband of the Woman) if he has been begotten by his wish; and he belongs to the man owner of the Seed, if he has been begotten by the wish of this latter; and he belongs to both, if he has been begotten by the wish of both.

(4) The fourth is the *Secretly Born* Son; he belongs to the man who has married his mother and who belongs to the same caste as himself.

(5) The fifth is the *Maiden-born* Son; he belongs to his Maternal Grandfather if this latter has no Son; but to the man who has married his Mother, if this man has no other Son.

(6) The sixth is the Son of the *Remarried Woman*; he belongs to the man who has remarried the Woman.

(7) The seventh is the *Adopted* Son; he belongs to the man who has adopted him.

(8) The eighth is the *Bought* Son; he is one who has been given away by the Father and Mother in consideration of price received, and belongs to the man who has bought him on account of his having no child of his own.

(9) The ninth is the *Appointed* Son; when a man having no *Son* is desirous of having one whom he could treat as *Son*, and there is another person who desires to be treated as his Son,—if the former requests the latter to become his Son and the latter agrees to it, he becomes the 'Son' of the former.

(10) The tenth is one who has *offered himself*; if one who has no Father or Mother living,—or who has been abandoned by them through anger,—comes and offers himself to another man as his Son, he becomes the 'Son' of that man.

(11) The eleventh is one who has been *Obtained with the Bride*; when a pregnant girl is married, the Son born to her becomes the Son of the man who married her.

(12) The twelfth is the *Cast-off*; when a child is abandoned by both or either one of the parents, through poverty or some such cause, and he is taken up by another person, he becomes the 'Son' of this person. *

Bṛhaspati—

[1017] 'The *Body-born* Son alone has been declared to be the owner of the property; equal to him is the *Appointed Daughter*;—the other Sons are only entitled to maintenance.'

And *Manu* (9.163)—

[1018] 'The *Body-born* Son alone is the owner of the paternal property; but in order to avoid unkindness to the others, he shall provide maintenance for them.' †

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* For a full account of the several texts bearing upon the exact character of each one of these 'Sons', the reader is referred to my '*Hindu Law in its Sources*', Vol. II, pp. 170–250.

† If the *Body-born* Son is there, all the others—*Soil-born* and the rest—are not 'heirs'; they are to receive from the *Body-born* Son only a subsistence—allowance.—

'*Ānṛshamsya*'—avoidance of unkindness, i.e. Pity.—*Prajīvanam*'—maintenance.

In a case where the *Son of the Appointed Daughter* * has been taken up, and then a *Body-born Son* is born,—the former receives the same share as the latter; as has been declared by the same authority (*Manu* 9.134)—

[1019] 'If a Son happens to be born after the Daughter has been *appointed*, the division shall be equal; as there is no seniority for the woman.' †

In order to avoid 'unkindness'—i.e. the sin involved in it;—the *Body-born* Son would incur sin if he did not provide maintenance for the other Sons—(*Medhātithi*).

This text refers to a case where the man, having failed, through disease or other causes, to have a *Body-born* Son, has obtained the *Soil-born* or other Sons; but later on, having been cured of the disease, has a *Body-born* Son born to him.—In such a case, the *Body-born* Son alone is the owner of the Father's property.—'*For the rest*',—for all the other 'Sons',—except the *Soil-born*, for whom a 'sixth part' of a share is going to be definitely assigned,—he should provide maintenance, in order to avoid sin—(*Kullūka*).

This provides for Food and Clothing for the *Adopted* and other Sons.—'*Vasunaḥ*'—of the Property.—'*Pitṛyasya*'—of what belonged to the Father.—'*Prajīvanam*'—subsistence—(*Rāghavānanda*).

The term '*aurasa*' here means *lawful*, and hence stands for all kinds of Sons; the meaning being that—'whichever individual, in the capacity of a *Son*, is entitled to inherit the property, shall inherit the *whole* of it, and for the rest, he shall provide maintenance'—(*Vishvarūpa*, p. 249).

This rule should be understood to apply to those cases where the *Adopted* and other Sons are inimical to the *Body-born* Son and also devoid of good qualities. For the *Soil-born* Son, *Manu* himself (9.164) has laid down the *fifth* or *sixth* part of a share.—['*Ēka ēva*' means the *Primary* Son alone, thus providing the reason for what is asserted here,—the reason being '*because* he is the *Primary* Son';—says *Bālambhaṭṭī*]—(*Mitākṣarā*, p. 701).

'*For the rest*'—i.e. for all those who have been declared, in several texts, as not entitled to share the property.—'*Ānṛshamsīya*' is *kindness, pity*.—'*Prajīvanam*', maintenance.—(*Vivādaratnākara*, p. 542).—Taken along with *Kātyāyana's* text—'*Utpannē tvaurasē putrē*, etc.' (below, No. 1020),—the present text implies that the 'mere maintenance' is meant for such *secondary* Sons as do not belong to the same caste as the Father—(*Vivādaratnākara*, p. 545).

This refers to cases where the *Body-born* Son was born before the others were taken up—(*Vivādachandra*, 24.1–3).

This is meant only to eulogise the *Body-born* Son, and *not* to preclude the 'fourth of a share' that has been assigned to the other Sons in other *Smṛtis*—(*Parāsharamādhava*, p. 348).

In reality, if the *Body-born* Son is there, the Appointed and other Sons receive only the third part of a share.—'*The rest*' stands for Sons belonging to castes different from that of the Father—(*Dvaitanirṇaya*, p. 38).

Those who belong to castes lower than that of the Father or of his *Body-born* Son are entitled only to food and clothing—(*Dāyabhāga*, p. 148).

This should be taken to mean that in cases where the *Adopted* and other Sons are inimical to the *Body-born* Son, they shall *not* receive the 'fourth part of a share', etc. that have been assigned to them in some texts;—it should also be taken as applying to the *Maiden-born* and other Sons; because it is these latter who have been declared to be entitled to *food and clothing only*, when the *Body-born* Son is there—(*Vīramitrodaya*, p. 616).

'*Ānṛshamsya*'—is *maintenance*—(*Vibhāgasāra*, 14.2–8).

* There is some confusion regarding the name '*putrikāputraḥ*'. This has been taken to mean—(1) the *Daughter* who has been 'appointed' by the Father (at her marriage, by reason of being given away on a certain understanding) as also (2) the Son of such a Daughter. We have rendered the name in English as 'Son of the Appointed Daughter',—the preposition 'of' according to the first explanation of the name, denoting *apposition*.—See in this connection *Aparārka*, *Mitākṣarā* and others on *Yājñavalkya* 2.128—and *Hindu Law in its Sources*, Vol. II, pp. 180-181.

† '*The division shall be equal*'.—There shall be equal shares with the Son thus born; this precludes the Preferential Share.—'*There is no seniority*';—the 'seniority'

Kātyāyana—

[1020] 'When the *Body-born* Son is born, the other Sons belonging to the same caste as the Father are entitled to the *third* [i.e. *fourth*] of a share; those not belonging to the same caste as the Father are entitled to food and clothing only.'

This title to the 'third of a share' belongs to the *Soil-born* Son only, as is clear from the following text of the *Brahma-Purāṇa*, which has the same source as the present text. *

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precluded is only in regard to the share in the inheritance, not in regard to the respectful treatment to be accorded to her—(*Medhātithi*).

This text answers the question as to the permissibility of the Preferential Share for the Son of the Appointed Daughter in the stated case, which may be considered to be due to her by reason of her seniority.—'*If a Son be born*'—to the said Daughter's Father.—'*Seniority*'—due to the presence of such qualities as Learning and the like, which are not possible for the woman—(*Sarvajñanārāyaṇa*).

If after the Daughter has been 'appointed', the man who has made the 'appointment' happen to have a Son born to him,—then at the time of the partition between these two 'Sons', there shall be equal division; and no Preferential Share shall be given to the Appointed Daughter; because even though she is 'senior' in age, that seniority will not be taken into account for the purpose of assigning a Preferential Share—(*Kullūka*).

As there is no 'seniority' for the Daughter, there can be none for her Son either —(*Rāghavānanda*).

'*Anu-jāyate*'—is born *after*—the Appointment of the Daughter.—'*To the woman*' —or to her Son—(*Nandana*).

In view of the notion being entertained that—'when the *Body-born* Son has been born, and both he and the Son of the Appointed Daughter are present, the property should go to the *Body-born* Son',—*Manu* has here set forth an exception to the general rule laid down by *Yājñavalkya* (2.132)—(*Mitākṣarā*, p. 699).

[On this the *Bālambhaṭṭī*.—When the *Mitākṣarā* says that this refers to a case where both the *Aurasya* and the *Putrikāputra* are present, it uses the latter term in the sense of 'Son *born* of the Appointed Daughter'; and when the text itself speaks of no 'seniority' belonging to the 'Woman', it has in view the other connotation of the name—'the Son *in the shape of* the Appointed Daughter.

'*A Son*'—i.e. a *Body-born* Son;—'*anu*'—after the 'appointment' of the Daughter. —'*Woman*'—in the shape of the Appointed Daughter—(*Vivādachandra* 23.2–8).

Here *Manu* has set aside the notion that 'under the circumstances stated, so long as the *Body-born* Son is there, the Son of the Appointed Daughter shall have no share in the property'—(*Vīramitrodaya*, p. 614).

This deals with a case where there is partition between the Appointed Daughter and the *Body-born* Son.—*Because she is a female*, seniority cannot belong to her; hence the division shall be in equal shares. The implication is that if the elder were a male, he would receive two shares—(*Dāyabhāga*, p. 39).

This text lends support to the view that the Daughter has almost as much right over her father's property as the Son; as even when there is a Son, the Daughter is to receive a share equal to that of the Son—(*Dvaitaparishiṣṭa*, p. 41).

In a case where a Daughter has been 'appointed' and then a *Body-born* is born,— they shall share the property equally—(*Vibhāgasāra*, 14.2-3).

* According to this, the rule is that, if no *Body-born* Son is born, the *Soil-born* Son receives the entire property of both his 'Fathers'; but if a *Body-born* Son is born, he receives only a *fourth share* ['*chaturtha*' i.e. for '*tṛtīya*'] in the property of their Father—(*Aparārka*, p. 733).

'*Savarṇāḥ*'—those belonging to the same caste as the Father,—i.e. the *Adopted*, the *Soil-born* and the rest—are to receive the 'fourth of a share'; and the '*asavarṇāḥ*, —those belonging to different castes,—i.e. the *Maiden-born*, the *Secretly Born*, the *One Obtained with the Bride*, and the *Son of the Remarried Woman*,—do not receive the 'fourth of a share'; these are entitled only to food and clothing— (*Mitākṣarā*, p. 700).

[The *Bālambhaṭṭī* explains the word '*asavarṇāḥ*' ('not belonging to the same caste as the Father') as 'the *inferior* kinds of Sons'.]

On the birth of the *Body-born* Son, the *Adopted* and other Sons, belonging to the same caste as the Father, receive the 'third of a share'.—In *Vashiṣṭha's* text

[1021] 'The *Body-born* Son, even though born later, should receive the entire estate; the *Soil-born* shall receive the third of a share, and the *Son of the Appointed Daughter*, the fourth'—(*Brahma-Purāṇa*).

Others have, however, held that the text (1020 above) refers to a *Soil-born* Son who may be possessed of very superior qualifications.
With reference to the 'Son', *Vashiṣṭha* says—

[1022] 'If after the taking of a *Son*, a *Body-born* Son is born, the former would be entitled to the fourth part of a share,—in case there is property (large enough); but only if the property is not employed in auspicious Rites.'

The Pronoun '*tasmin*' stands for the *Son*; and '*sa*' for the Son who had been taken.—After '*yadi syāt*', '*in case there is*', the expression 'large enough property' should be taken as understood.—But this is to be so only if the property is not employed in auspicious sacrificial rites.*

[Text No. 1022 below], the *Adopted* Son has been assigned the '*fourth* of a share', while in the present text he is assigned the '*third* of a share';—this discrepancy is to be reconciled as being due to the difference in the qualifications of the Son concerned; if he is possessed of superior qualifications, he receives the 'third', while, if not possessed of superior qualifications, he receives only the '*fourth*'.—From this text it follows that the declaration of *Manu* to the effect that—'for the other Sons, mere maintenance shall be provided'—is meant for only those Sons who do not belong to the same caste as the Father—(*Vivādaratnākara*, p. 545).

On the birth of the *Body-born* Son, the *Adopted* and other Sons, if belonging to the same caste as the Father, receive the 'third of a share'; those belonging to other castes are only to be supported—(*Vivādachandra* 24.1-5).

Some people have declared that the conclusion deduced from a due examination of the present text is that, if the *Body-born* Son is there, the *Appointed* and other Sons are to receive the 'third of a share'.—But this cannot be right; because, if we take this text along with the *Brahma-Purāṇa* text (No. 1022 below), we find that it is the *Soil-born* Son alone who is entitled to the 'third of a share'.—The qualification '*savarṇāḥ*', 'belonging to the same caste', also pertains to the *Soil-born* Son; the Plural Number being used in view of the possibility of there being several *Soil-born* Sons—(*Dvaitaparishiṣṭa*, p. 38).

'*Savarṇāḥ*'—those who belong to the same caste as the Father; i.e. the *Soil-born*, the *Adopted*, the *Bought*, the *Appointed*, the *Self-offered* and the *Cast-off*.—'*Asavarṇāḥ*', 'those not belonging to the same caste',—i.e. the *Maiden-born*, the *Secretly Born*, the *One Obtained with the Bride* and the *Son of the Remarried Woman*—(*Madanapārijāta*, p. 654).

The term '*asavarṇa*' stands for 'one belonging to a *lower* caste'—(*Dāyabhāga*, p. 148).

'*Savarṇāḥ*'—i.e. the *Soil-born*, *Adopted* and the rest; these are entitled to the 'fourth of a share', if the *Body-born* son is there.—'*Asavarṇāḥ*'—i.e. the *Maiden-born*, *Secretly Born*, *Obtained with the Bride* and *Born of the Remarried Woman*; these are not entitled to the 'fourth of a share'; they receive only food and clothing—(*Vīramitrodaya*, p. 615).

The 'third of a share' is meant for the *Soil-born* Son—(*Vibhāgasāra* 17.2-9).

* This refers to cases where the *Body-born* Son is born after a Son has been taken up—(*Aparārka*, p. 739).

Even when the *Body-born* Son is there, the other Sons are entitled to the fourth part of a share. The term '*pratigṛhīta*' Son spoken of here is meant to be the *Adopted*, *Bought*, *Appointed* and others; it is not confined to the *Adopted* only; as all these are 'taken' as one's *Son*—(*Mitākṣarā*, pp. 699-700).

'*A Son*'—other than the *Body-born*.—'*Saḥ*'—the Son that had been taken up.—'*Yadi syāt*',—if the property is a large one; the words '*prabhūtam dhanam*' being taken as understood.—'*Yadi nābhyudayikēṣu, etc.*'—if the property is not employed in the performance of sacrifices and other rites—(*Vivādaratnākara*, p. 544).

After '*a Son*'—i.e. any of the substitutes prescribed—has been '*taken*'—if a *Body-born* Son happen to be born, the former would be entitled to the fourth part of

On this subject all the authorities, *Manu* and others, have declared that, even when there are other kinds of 'Sons', the *entire* property of the Father goes to the *Body-born* Son; and yet these same authorities have also declared that those other 'Sons' also are entitled to certain shares in that property—this seeming inconsistency is to be explained in the following manner: It is only in cases where the *Body-born* Son is possessed of superior qualifications; as it is only such qualified *Body-born* Son that would be entitled to the entire property; while in cases where the *Body-born* Son is devoid of good qualifications, while the other Sons are possessed of superior qualifications, these latter are to receive shares in the property.

In this same manner, as between the *Soil-born* Son and the *Adopted* Son, various sages have declared their title of varying shares—some larger, some smaller,—in the property,—and this also has to be reconciled through considerations of the superior or inferior qualifications possessed by them.

There is yet another inconsistency regarding the liability to perform the *Shrāddha*, as resting on the one or the other of them,—different views having been expressed by *Viṣṇu* and *Yājñavalkya*,—this also may be explained either as two optional alternatives, or as based upon the superior or inferior qualifications of the Sons concerned.

With reference to partition between two men who have the same Mother but different Fathers, says *Viṣṇu* (17.23)—

[1023] 'Among the Sons of several Fathers (progenitors), the shares are determined through the Fathers; each shall receive the property that belonged to his own progenitor, none other.' *

The several kinds of *Sons* have been described in detail in the *Shrāddha-chintāmaṇi*; hence, they are not described here.

Those 'Sons' who have been taken up in a manner not in keeping with the method laid down in the Scriptures are *not true* Sons; hence, they are not entitled to inheritance.

SECTION (N)—HEIRS TO THE PROPERTY OF SONLESS PERSONS

On this subject, says *Viṣṇu* [17.4–13)—

[1024] (A) The property of a Sonless man goes to his Wife;—(B) failing her, to his Daughter;—(C) failing her, to his Mother;—(D) failing her, to his Father;—(E) failing him, to his Brother;—(F) failing him, to *Bandhus*;

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a share; if the property is not used by the *Body-born* Son in the performance of sacrifices—(*Vivādachandra* 24.2-6).

'*Ābhyudayikēṣu*'—in sacrificial performances—(*Vibhāgasāra* 15.1-2).

* 'Among the Sons of several Fathers'—but of the same Mother—(*Vivādaratnākara*, p. 543).

In a case where, among several Brothers, one has a *Body-born* Son, and others have other kinds of Sons,—and all these Brothers have died while living together with joint property,—if the said Sons come to divide this ancestral property, the share of each shall be determined in accordance with his being the 'primary' or 'secondary' Son of his Father—(*Smṛtichandrikā*, pp. 671-672).

In a case where on a single Woman, a *Soil-born* Son has been begotten first, through someone else,—and then the same Woman gives birth to a *Body-born* Son to her Husband,—the *Soil-born* Son shall receive the property of his progenitor (i.e. the someone else by whom he has been begotten), while the *Body-born* Son shall receive the property of *his* progenitor—i.e. the Woman's Husband—(*Vivādachandra* 24.1-2).

If there are two Sons born of the same Mother, but from different Fathers,—each of them receives the property of his own progenitor—(*Vibhāgasāra* 15.1–6).

This refers to the case of persons who are born of the same Mother, but from different progenitors—(*Dāyanirṇaya* 22.1–3).

—(G) failing them, to *Sakulyas*;—(H) failing them, to his fellow-scholar;—(I) failing him, to the King,—except in the case of the *Brāhmaṇa*.'

The word '*Bandhu*' here stands for *Sapiṇḍa*, and '*Sakulya*' for *Sagotra*.* The '*Sapiṇḍa*' and the '*Sagotra*' have been thus defined by *Bṛhaspati*—

[1025] 'The *Sapiṇḍa-relationship* ceases at the seventh degree; the *Samānodaka-relationship* ceases at the fourteenth degree; according to some, this latter extends up to the point where the birth and name are recognised;—beyond that is the *Gotra-relationship*.'

The term '*anapatyasya*', 'Sonless' (in *Viṣṇu's* text No. 1024 above) stands for one who has left no Son or Grandson or Great-grandson.—The liability to offer *Shrāddha* is well known as resting upon 'the Son or Grandson or Great-grandson', in this same order of sequence in which these are mentioned in the texts,—and the right to inherit property is well known as resting upon the basis of that liability; and hence this right rests upon these in this same order of sequence.

(A) Thus it is that—when there is no Great-grandson also, the Wife becomes entitled to the property.

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* The same remark occurs in the *Vivādaratnākara* (p. 595), where the opinion is attributed to '*Mishrāḥ*'. It cannot be *Vāchaspati Mishra* who is much later than *Chaṇḍeshvara*. Who is then the 'Mishra' mentioned by the latter?

'*Bandhu*' here is *Sapiṇḍa*.—'*Sonless*'—one who has left no Son or Grandson or Great-grandson—(*Vibhāgasāra* 15.1–9 to 10).

Here *Viṣṇu* declares the Wife's right to inherit the entire property—(*Mitākṣarā*, p. 727).

Here the Wife's has been declared to be the first claim. It cannot mean that the Wife is to receive just enough for her maintenance; as it would be most illogical to take the same word '*dhanam*', 'property', as standing for only a *part* in the case of the Wife, and for the *whole* in the case of the Brother and others. It has to be admitted that the Wife is entitled to the entire property—(*Dāyabhāga*, p. 15).—Among Nephews (Brother's Sons), the property goes first to the Son of the uterine Brother, and failing him, to the Son of the non-uterine Brother. The Son of the non-uterine Brother, when making the offerings, offers it to the Father of the deceased owner (as his own Grandfather), along with his own Father's Mother, but omits the Mother of the deceased (who is not his Mother); to this extent, his position, in relation to the deceased Brother, is *lower* (i.e. remoter) than that of the Son of the uterine Brother of the deceased; that is the reason why his title to the property comes after that of the latter—(*Dāyabhāga*, pp. 206-207).

'*Sonless*' here stands for one who has no Son or Grandson or Great-grandson—(*Smṛtitattva* II, p. 189).

After the Mother, comes the uterine Brother; then the Son of the uterine Brother.—*Vijñānēshvara* and others have held that after the uterine Brother, comes the Step-brother, then the Sons of the uterine Brother.—But this cannot be right; because the term '*bhrātṛ*', 'Brother', denotes the *uterine Brother* primarily, and the *step-brother* only indirectly, figuratively; and it would be wrong to take the same word in the same sentence in both these connotations.—Others again have held that the term '*bhrātaraḥ*', 'Brothers', is a copulative compound, standing for 'Brothers and Sisters', so that, in the absence of *Brothers*, the property should go to the *Sisters*.—This also cannot be right; because there is nothing to justify the suggested copulative compound.—In a case where, at the time of the Uncle's death, the Nephews had not acquired a right in his property, on account of the presence of their Father (the Brother of the deceased),—and subsequently their Father has died,—when the dead Uncle's property comes to be divided among the surviving Brothers of the deceased and the said Nephews,—these latter shall receive the share that would have been their Father's. This would be in accordance with the *Yājñavalkya* 2.120—(*Vyavahāramayūkha*, p. 142).

The term '*Sakulya*' and '*Bandhu*' must stand for the relatives beginning with the Brother's Grandson and ending with the *Samānodakas*; otherwise, what is asserted here would be inconsistent with other *Smṛtis*.—'*Sonless*'—i.e. one who has left no Son or Grandson or Great-grandson—(*Dāyanirṇaya* 9.2–5).

On this subject, *Vṛddha-Manu* says—

[1026] 'The Sonless Widow herself, faithful to her Husband's bed and firm in her vows, shall offer the cake to him and receive his entire share.'*

So also *Bṛhaspati* (25.48–52)—

[1027] 'Although his kinsmen, his Father, Mother and uterine Brothers be living,—the Wife of a man dying Sonless shall take his share. The Wife dying before her Husband takes away his consecrated Fire; and if the Husband dies before her, the good woman, faithful to her lord, takes his property. Such is the eternal Law.—After having received the moveable and immoveable property, the gold and base metals, the grains, liquids and clothes, she shall have his monthly, six-monthly and yearly *Shrāddhas* offered.—She shall propitiate, with funeral offerings and charities, her Husband's Paternal Uncles, Teachers, Daughter's Sons, Sister's Sons and Maternal Uncles, as also aged and helpless persons, guests and women.—If Agnates or Cognates, inimical to her, should seek to injure her properties, the King shall inflict on them the punishment ordained for the thief.'

The upshot of the whole is this:—The specific enumeration of the *Shrāddhas* indicates that the Wife should perform his first Funeral *Shrāddha* as also the Yearly Ones and should take his entire property.

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* This text makes it clear that if a Widow is desirous of being 'appointed' to bear children, she ceases to be entitled to inheritance; as in that case, she could not be said to be 'faithful to her Husband's bed'.—What is meant is that the Widow who fulfils the conditions here laid down receives her Husband's entire property and offers the *Shrāddha* to him, even when his Father or Brother is there—(*Aparārka*, p. 742).

The title of the Widow to her Husband's entire property is set forth here,—(*Mitākṣarā*, p. 726),—but only if she keeps herself under control (*Mitākṣarā*, p. 737).

'*Vows*'—The observances and rules laid down for the Widow—(*Vivādaratnākara*, p. 589).

If the Widow fulfills the conditions here laid down, she alone shall receive the Husband's entire property and also offer the *Shrāddha* to him; and so long as she is there, the Husband's Brother and other relations shall not take the property or offer the *Shrāddha*. '*Faithful to her Husband's bed*', i.e. well controlled in her behaviour;—'*vratē sthitā*'—even during her Husband's life-time, keeping the fasts and observances with his permission. This indicates that religious faith also is one of the qualifications necessary for entitling the Widow to inheritance. Though, by her marriage, the Woman became entitled to the property during the Husband's life-time, through the Husband,—yet what is asserted here is that she acquires independent ownership over the property after his death—(*Smṛtichandrikā*, p. 675).

In the compound '*tatpiṇḍam*', the pronoun '*tat*' stands for the Husband; hence the meaning is that 'the Wife obtains the entire share *of her Husband*, not her own share—(*Dāyabhāga*, p. 152).

There is no such sequence meant here as that—'she shall *first* obtain the *property* and *then* perform the *Shrāddha*'; for, if such sequence were insisted upon, the performance of the *Shrāddha* might be delayed; for which there would be no justification. The particle '*ēva*' shows that, even though the Brother and other relatives of the Husband may be there, it is the *Wife alone* who is entitled to take the property and offer the *Shrāddha*—(*Vīramitrodaya*, pp. 624-625).

In the absence of the Son, Grandson and Great-grandson, the chaste Wife shall inherit his property. This refers to cases where the Husband has been a divided coparcener—(*Dvaitaparishiṣṭa*, p. 41).

This implies that the *unchaste* Widow is not entitled to the Husband's property.—'*Entire share*'—his entire property, not only that much which might be needed for her maintenance.—The Wife meant here is one belonging to the same caste as the Husband—(*Dāyanirṇaya* 4.2–8).

This applies to the property of the Husband who had been separated from the coparceners.

The term '*Pativratā*', 'faithful to her lord', connotes *chastity*, not merely *devotion to the Husband*; because such *devotion* to the Husband could be ascertainable only till the death of the Husband,—which would mean that the woman would not inherit the property at all.—What therefore is meant is that if the Widowed Wife remains chaste,—and the Husband has left no Son or Grandson or Great-grandson,—she is entitled to receive the property.*

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* '*Sakulya*'—this term is meant to include all *Sapiṇḍas*, other than the 'Father' and 'Brothers' specially mentioned, also Daughter and Daughter's Sons and so forth.—The term 'Father' includes the Mother also; and the term 'Brother' includes the Sister.—'*Bhāga*' stands for *property*—(*Bālambhaṭṭī* on *Mitākṣarā*, p. 728).

This text declares the Wife as having the first claim on the Husband's property—(*Parāsharamādhava*, p. 353).

In the absence of primary and secondary Sons,—even when the Father and other relations down to the *Sakulya* are there,—the Wife is entitled to receive her Husband's property.—. . .'*Patnī*' stands for one who has been duly married in the *Brāhma* form, or in some such form as entitles her to join her Husband at religious performances; and it excludes all those not so married. This term '*patnī*', 'Wife', also indicates the woman's capability to perform the Husband's *Shrāddha*, etc. and hence her title to inherit the property.—The term '*Agnihotra*' stands for the Consecrated Fire with which the *Agnihotra* Rites are performed.—'*Pativratā*', 'faithful to her lord',—i.e. self-controlled.—'*Nārī*', 'woman' stands for the *Wife*.—'*Kupya*'—base metals, such as zinc, lead and the like.—'*Kavya*' is food dedicated to the *Pitṛs*, and '*Pūrta*' for such fees and gifts as accompany works of public utility like the digging of tank and so forth.—What is meant is that having received all the property, moveable and immoveable, the Wife shall perform all those acts requiring wealth to which she is entitled; such as *Shrāddhas*, works of public utility, charities and so forth,—which are conducive to her own and her Husband's spiritual welfare—with the half of those preceptors and priests who are allied to the Husband's family.—The Wife's title to the property here set forth refers to cases where the Husband has been a *divided* member of the family—(*Smṛtichandrikā*, pp. 673–675).

The meaning is as follows:—When a man dies Sonless, all his property,—immoveable and moveable,—goes to his Wife, even when his uterine Brother, paternal uncle, Daughter's Son and others are there; and those who oppose her or take away the property themselves should be punished like thieves.—This entirely rejects the view that—'Even when the Wife is there, the property shall go to the Father, Brother or other relations of the deceased'—(*Dāyabhāga*, pp. 150-151).—'*She shall have his monthly Shrāddhas, etc. etc.*';—i.e. for the due performance of the *Shrāddha* of her Husband, she shall give adequate wealth to the Uncle or other relations of her Husband.—The term '*pitṛvya*', 'Paternal Uncle', stands for *Sapiṇḍas* in general;—the term 'Daughter's Son' stands for all descendants of the Husband's Daughter;—'Sister's Son' stands for the descendants of the Husband's Sister;—and 'Maternal Uncle' for the Husband's Mother's family.—She shall give the money to these, and not to her own Father and other relations, so long as the Husband's relations are there. She can do so however with the consent of these—(*Dāyabhāga*, p. 173).

The person entitled to inherit the Husband's property is the Wife who has been associated with him in the performance of the *Shrauta* and *Smārta* rites.—'*Kupyam*'—zinc, lead and other base metals.—What is meant is that, having inherited all her Husband's property—including the immoveable,—the Wife shall propitiate her Husband's relatives and perform all those acts requiring the expenditure of wealth to which she is entitled and which would be conducive to her Husband's and her own spiritual welfare; and while she is doing this, if any man harass her, he should be punished like a thief.—These texts lay down the first claim of the Wife on the property of her Husband who has died childless, having been divided from his family and not 'reunited'—(*Vīramitrodaya*, pp. 524–631).

The upshot of the whole is that if a man dies childless, the liability of performing his *Shrāddha* falls on his Wife, and it is she that is entitled to inherit the entire property.—This refers to cases where the Husband has been divided from his coparceners.—'*Pativratā*', chaste.—If the man has died as an *undivided* member of a joint family, and his Widows have no children, then the head of the family shall give something and also old but untorn clothes to his widowed Daughter-in-law—(*Vibhāgasāra* 15.2–7).

In regard to cases where the Husband has not been a *divided* member of the joint family, *Shaṅkha* has declared as follows—

[1028] 'To his Brother's Wives and to his Daughters-in-law, who are behaving in the proper manner, the Head of the Family shall give only food and such old clothes as may not be torn.'*

Hārīta—

[1029] 'In case the Widow is in her youth and is rough-mannered, *Strīdhana* should be provided for the maintenance of her life.'

This applies to the case of the Wife of a person who had become 'reunited' with the family;—so says *Bālarūpa*.†

If the Husband had been an undivided member of the joint family when he died,—*his share* itself had not come into existence (not having been brought about by division); under the circumstances, what could the Widow inherit? She herself could not be the partaker in the division and hence directly entitled to that share; as there is no authority for this. The present texts themselves cannot serve as the authority for it; as these are explicable as applicable to cases where the property had been divided. It is for this reason that there is the following declaration by *Vashiṣṭha*—

[1030] 'There is partition of Inheritance among Brothers,—as also for childless Women, till they get a Son.'‡

Hence when there is a Brother's Widow pregnant with embryo left by her Husband,—and her Brothers-in-law and others proceed to divide the property, a share has to be set aside for the said Widow who is expected to give birth to a Son, till her delivery takes place;—in case she does not bring forth a *Son*, that share shall be taken by her Brothers-in-law and others.—Such is the explanation provided by the *Ratnākara* and others.

In the *Mahābhārata*, we read—

'*Childless*'—who has left no Son or Grandson or Great-grandson—(*Dāyanirṇaya* 4.2-7).

* If the Brother's Widow is expected to be 'carrying', a proper share should be allotted for the expected Son; if the child born *is* a Son, the share goes to him; if it is *not* a Son, then that share shall be divided among the Widow's Brothers-in-law, and she is to receive food and clothing—(*Dāyanirṇaya* 21.1–5).

† This text lays down what is to be done in cases where the Widow is suspected of being unchaste.—'*Karkashā*' is hard-hearted, ill-tempered, capable of violence, suspected of unchastity—(*Smṛtichandrikā*, p. 680).

This refers to cases where the Widow is suspected of immorality—(*Parāsharamādhava*, p. 359).

Hārīta has here prohibited the taking of the entire property by the Widow suspected of misconduct. This same text implies that if the Widow is *not* suspected of misconduct, she shall receive her Husband's entire property—(*Vīramitrodaya*, p. 639).

The sense is that the Widow shall inherit the Husband's property only if she is chaste,—not if she is unchaste (p. 137).—If she is suspected of unchastity, she shall receive bare maintenance—(*Vyavahāramayūkha*, p. 340).

Other people have held that this refers to the Wife of the 'reunited' coparcener. It has been already pointed out that the Widow of a childless *undivided* member of a joint family has no *share* in the property; and in the *Mahābhārata* it has been declared that 'that the only interest that the Wife has in her Husband's property is that she can enjoy it'; and again, that—'Women shall not make any disposal of the Husbands' property'; where 'disposal' stands for freely giving away, selling and so forth—(*Vibhāgasāra* 15.2–9).

‡ See above, where this *text* has been quoted as Text No. 904 and commented upon.

[1031] 'The only interest that Women have in their Husbands' property is that they can enjoy it; Women shall, in no case, dispose of the property of the Husbands.'

'Dispose of'—i.e. give away or sell and so forth at their will. *

(B) 'When the *Wife* is not there, the property goes to the *Daughter*', as declared by *Viṣṇu* quoted above. [Vide Text No. 1024.]

Nārada also—

[1032] 'In the absence of the Son, the Daughter [shall inherit the property]; since both are equally offsprings; the Son and the Daughter both help to propagate the line of the Father.'†

So also *Manu* (9.130)—

[1033] 'The *Son* is as one's own *Self*; and the *Daughter* is equal to the *Son*; so long as she is there, as the Father's own *Self*, how can any one else take the property?'‡

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* The 'enjoyment' permitted should not be in the form of wearing fine clothes and the like; it is only the maintaining of the body for the spiritual welfare of the Husband, that is meant—(*Vīramitrodaya*, p. 628).

The making of such gifts also is sanctioned as are made in connection with *Shrāddhas* offered to the Husband—(*Dāyabhāga*, p. 173).

'*Enjoyment*'—i.e. she shall spend only what is needed for her maintenance—(*Dāyanirṇaya* 5.2–6).

† If the *Wife* is not there, those *Daughters* shall inherit the property who belong to the same caste as the Father—(*Aparārka*, p. 743).

Here *Nārada* declares the right of the *Daughter*, in the absence of the *Wife*—(*Vivādaratnākara*, p. 591).

Both help to propagate the line, which is conducive to the Father's welfare. What is meant is that, so far as the help rendered to the Grandfather is concerned, the *Son's Son* and the *Daughter's Son* are equal. This quality does not extend to the paying of the Grandfather's debts, as that devolves only upon the *Son* and the *Son's Son*—(*Smṛtichandrikā*, p. 683).

The 'offspring' meant here is one who offers the funeral cake; an offspring that does not offer the funeral cake, according no help, is as good as the offspring of another person;—and it is the *Daughter's Son* who offers the cake, not the Son of the Daughter's Son; nor the Daughter's Daughter. Thus then, that Daughter is entitled to inherit the Father's property who has a Son, or who expects to have a Son. One who is barren or a Widow or a Mother of Daughters alone, would not be so entitled.—We must accept this view put forward by *Dīkṣita* (p. 175).—In the compound '*putrābhāvē*', the term '*putra*' stands for *the Son and the Wife*—(*Dāyabhāga*, p. 1013).

Bālambhaṭṭī on *Mitākṣarā* (p. 767) also declares that it is the Daughter with a Son that inherits the Father's property.

The *Son* and the *Daughter* both serve to propagate the Father's line, through their Sons; hence, the Daughter is as much entitled to inherit the property as the Son. Though the *Son's Son* and the *Daughter's Son* are not exactly alike in form, yet the purpose that they serve for their Grandfather is the same—(*Vīramitrodaya*, p. 657).

Here we find it laid down that the property goes to the Daughter—(*Vivādachandra* 25.2-2).

‡ In connection with the Appointed Daughter, it has been said that the Father shall make the declaration—'The Son that is born of her shall be mine',—and a man's *Son* inherits his property; so that, at the time that the Father dies, if the Daughter has got no Son, it might seem that she would not inherit his property. It is in view of this that the present text lays down that *she shall inherit it*,—while the Father's own self is there, in the shape of the Daughter,—or so long as the Daughter is there in her own real character of having been 'appointed' to provide a Son for her Father.—Though the text uses the generic term 'Daughter', it is clear from the Context that it is the *Appointed Daughter* that is meant—(*Medhātithi*).

The *Appointed Daughter*, none else, shall inherit the property of the Sonless deceased—(*Sarvajñanārāyaṇa*).

Bṛhaspati (25.56)—

[1034] 'The Daughter, like the Son, springs from each limb of the man; how then should any other person inherit her Father's property?'

What sort of a Daughter is entitled to inherit the Father's property is explained by the same authority in the following text—

[1035] 'A Daughter of the same caste, and married to a man of the same caste, gentle and devoted to service, shall inherit her Sonless Father's property,—whether she has been *appointed* or *not-appointed*'—(*Bṛhaspati* 25.57).*

The Son takes the place of the Father himself;—the Daughter is equal to the Son;—hence so long as the Appointed Daughter, who is the very self of the Father, is there, how can any one else inherit the property of the deceased Sonless Father?—(*Kullūka*).

The *Appointed Daughter* is entitled to the property of her Sonless Father; and her Son takes the place of the man's 'Son's Son'.—'Any one else'—an Agnate—(*Rāghavānanda*).

The *Daughter* meant here is the *Appointed Daughter*—(*Nandana*).

'*Ātmani*'—equal to the Son, who is equal to the man's own self.—When the deceased has left no Son or Widow, his property goes to his Daughter—(p. 683). The Father of the deceased cannot come before the latter's Daughter; because though his Father may be more helpful to him spiritually, yet his Daughter is more nearly related to him physically—(*Smṛtichandrikā*, p. 684).

In the absence of the Wife, the Daughters inherit the property of the man who, being divided and not reunited, has died Sonless—(*Vīramitrodaya*, p. 656).

In the absence of the Wife, the living Daughter shall receive the property—(*Vivādaratnākara*, p. 591).

In the absence of the Wife, the Daughter shall inherit the property. If there are more Daughters than one, they shall divide the property among themselves—(*Vyavahāramayūkha*, p. 141).

* '*Sadṛshī*'—belonging to the same caste as the Father. This implies that the Daughter belonging to a different caste is not entitled to inherit the Father's property.—'*Kṛtā*'—*appointed*. The *Appointed Daughter* is mentioned only by way of an example; a man having an *Appointed Daughter* cannot be called 'Sonless'; hence the present text could not be taken as laying down the *Appointed Daughter's* title to inheritance—(*Aparārka*, pp. 743-744).

'*Sadṛshī*'—of the same caste as Father. The first four qualifications mentioned here refer to the inheritance of Daughters after the death of the Wife of the deceased . . . . . What is meant is as follows:—If the Father has left no *Body-born* Son, both kinds of *Appointed Daughter* shall get the property before (i.e. in preference to) the Wife of the deceased; but the ordinary Daughter, endowed with the said four qualities, inherits it only after the Wife. Thus after the Wife, if there are several Daughters,—some unsettled and some unmarried,—it is the *unmarried* Daughter that inherits the property; as it is she who had to be maintained by the Father. In case there is no unmarried Daughter, the property goes to that Daughter who is *unsettled* (poor), because even though her maintenance is the duty of her Husband, she remains *unsettled* by reason of her Husband's inability to maintain her.—If there is no *unsettled* Daughter, the property goes to the *settled* Daughter.—If there is no *settled* Daughter, it goes to the Daughter's Son—(*Smṛtichandrikā*, p. 687).

'*Sadṛshī*'—of the same caste as the Father;—'*married to a man of equal caste*';—this has been added with a view to exclude the Daughter married to a man belonging to a higher or lower caste; as the Son of such a Daughter is not entitled to offer *Shrāddha* to his Mother's Father; while the Daughter married to one of the caste as her Father benefits the Father through her Son.—As for the *Son of the Appointed Daughter*, he is as helpful to the Father as the latter's *Son*, and hence his title to inheritance is equal to that of the Son.—As for the Daughter other than the *Appointed* one, the benefit conferred by her upon her Father is indirect, through her Son; hence her title comes in only *after* that of the *Son* and the *Wife*.—The qualification 'devoted to the service of her Husband' indicates that she should not be a *Widow*, which implies that she should be capable of bearing Sons.—The addition of so many qualifications implies that the Daughter is not entitled to inherit

According to the declaration of *Parāshara* to the effect that—

[1036] 'If a man dies childless, his unmarried Daughter should take his property,—and if there is no such Daughter, then the married Daughter. The inheritance should be in this order.—Such is the opinion of *Bālarūpa*.' *

It would not be right to assert that—'all this is applicable to the *Appointed Daughter*, because of the text (1035) using the words *appointed or unappointed*'.—Because *Manu* has declared that *even where the deceased has left a Son*, the Appointed Daughter is entitled to a share equal to that of Son's. [So that a man who has an *Appointed Daughter* cannot be regarded as *Sonless*.]

(C) In the absence of the Daughter, the property goes to the *Mother* according to the declaration by *Viṣṇu* (Text No. 1024).

Says *Bṛhaspati* (25.63)—

[1037] 'When her Son has died without leaving a Wife or Daughter, the Mother should be regarded as entitled to his property;—or his Brother with her consent.' †

'*With her consent*'—i.e. with the *Mother's* consent.—The term '*Mother*' here includes the *Father* also; hence the term '*tadanujñayā*' means 'with the consent of the *Father and the Mother*'; such is the view of the *Pārijāta*.

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by virtue of being a *Daughter*; she does so by virtue of her being possessed of the said qualifications—(*Dāyabhāga*, p. 177).

'*Sadṛshī*'—of the same caste as the Father.—'*Sadṛshēna*'—to one belonging to the same caste as herself. This is meant to exclude the connection with higher or lower castes; because the Sons born of such connection are precluded from offering *Shrāddha* to the Maternal Grandfather.—Such is the view of *Jīmūtavāhana* (*Dāyabhāga*).—This however cannot be accepted, because the term '*ūḍhā*', 'married', itself serves to exclude the connection of a *lower* caste; because a girl wedded to a man of a lower caste cannot be regarded as 'married'. Hence, the qualification can be taken only as excluding the *higher* caste.

This lays down what sort of a Daughter is entitled to inherit the Father's property—(*Dvaitaparishiṣṭa*, p. 41).

This text points out what sort of unmarried Daughter inherits the property of her Sonless Father.—All this does not refer to the case of the *Appointed Daughter*. Because 'she is equal to the Son', and as such, entitled to inherit the Father's property directly; so that it would be only in her absence that the property could go to the Mother—(*Vibhāgasāra*, 16.1-4).

The law on this point is thus summed up in *Dāyanirṇaya* (6.1-8):—Among Daughters, first comes the *unmarried* Daughter, who possesses an inherent right over her Father's property;—then comes the *married* Daughter who has no Son;—then the Daughter who has, or expects, a Son;—the property cannot go to the Husband or other relatives of the Daughter.—According to *Dīkṣita*, it is only the Daughter having or expecting a Son who is entitled to the inheritance,—not the childless, widowed or barren Daughter; because there is no chance of the Father receiving offerings through the latter Daughters.—But according to *Mishra*, these latter also are entitled to the inheritance when there is no Daughter with a Son.

* Where the deceased has left one *married* and one *unmarried* Daughter, the property shall go to the latter—(*Smṛtitattva* II, p. 191).

† In the absence of the Father, the Mother,—or with her consent, the Brother—shall inherit the property—(*Aparārka*, p. 745).

'*Tadanujñayā*'—with the *Mother's* consent—(*Vivādaratnākara*, p. 591).

This is in accordance with *Yājñavalkya's* text—'*Patnī duhitaraḥ, etc. etc.*' (Text No. 1044 below)—(*Vibhāgasāra*, 16.1-6).

The term '*bhāryā*', 'Wife', must include the Daughter, the Daughter's Son, and the Father,—who come before the *Mother* in the order of succession. Hence the meaning is that—'when one has died without leaving a Son or Wife or Daughter or Daughter's Son or Father, etc. etc.'—(*Smṛtichandrikā*, pp. 691-692).

This rule should be taken as applying to cases where the deceased has left no Son, Wife, Daughter, Daughter's Son, or Father—(*Dāyabhāga*, p. 186).

Bṛhaspati—

[1038] 'Just as the Daughter is entitled to inherit her Father's property even while his *Bandhus* are there,—so also is her Son entitled to the property of his Mother and Maternal Grandfather.'*

Manu (9.132)—

[1039] 'The Daughter's Son shall inherit the entire property of the Sonless Father; he shall also offer two cakes—one to his own Father and another to his Mother's Father.'

Both these texts (1038 and 1039) should be taken as applicable to cases where the Son, etc. are not there,—because of the order of succession laid down by *Yājñavalkya* (No. 1045 below).†

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* This is applicable to the case of *Appointed Daughters*—(*Vivādaratnākara*, p. 561).

The Daughter is entitled to the Father's property, by virtue of the cake that her Son offers to her Father; and by virtue of that same cake-offering the Daughter's Son himself is the heir to the property of his Maternal Grandfather.—This cannot refer to the *Son of the Appointed Daughter*—(*Dāyabhāga*, p. 180; *Vīramitrodaya*, p. 662; also *Dāyanirṇaya* 6.2–10).

† That the Son of the *Appointed Daughter* shall inherit the property of her Father having been already laid down in the preceding text (*Manu* 9.131), the present text has been explained by some people as laying the necessity of his offering the two cakes to the two persons; according to these people the reading in place of '*pitur-harēt*' is '*hared-yadi*', the meaning being—'In case the Son of the *Appointed Daughter* inherits the property . . . *he shall offer two cakes*'. According to this view, the offering of the two cakes would be incumbent only in the event of the man inheriting the *entire* property; so that he need not offer the cakes in the event of his receiving only 'an equal share', as laid down in *Manu* 9.134.—This explanation however cannot be right; what is actually meant is that 'he shall inherit the property of the Sonless Father',—'*Aputrasya pitur-harēt*' being the generally accepted reading. The term 'Father' here stands for the *Progenitor*, and not for the *Maternal Grandfather*; hence what is meant is—'In case the Husband of the *Appointed Daughter* has no other Son from any other Wife, except the one of the *Appointed Daughter*, then this same Son shall be the *Son and heir* of his own Father as also that of his Mother's Father; if however the Father has other Sons from other Wives, then the Son of the *Appointed Daughter* shall neither inherit the property of, nor offer the cake to, that Father (Progenitor). The relation of 'progeny and progenitor' is different from that of 'Father and Son'; even though the 'Father' of the *Kṣētraja* Son, for instance, is not his 'Progenitor', yet the Son is regarded as his Son.—The conclusion, therefore, should be as follows:—(*a*) In a case where the Husband of the Appointed Daughter has no other Sons, the Son of that Appointed Daughter shall inherit his entire property and shall also offer the Cake to him as well as to his Mother's Father;—(*b*) if however, the said Father has other Sons from other Wives, then the Son of the Appointed Daughter shall not offer the Cake to him; he shall offer to his Mother's Father only.—The same principle applies to the case of the Maternal Grandfather also; i.e. the Son of the Appointed Daughter shall offer the cake to him if he inherits his property. In fact the injunction that 'He shall inherit the property and offer the cake' does not necessarily imply that there should be no offering if he does not inherit the property—(*Medhātithi*).

The Son of the Appointed Daughter inherits the property, not only of his Mother's Father, but also that of his own Father (Progenitor), his Mother's Husband, —if the latter has no other Son.—The term '*Daughter's Son*' here stands for the Son of the Appointed Daughter; he shall inherit the property of his Progenitor, as it was from his seed that he was born, and as such is more nearly *Agnate* to him than any other *Agnate*. Where, in regard to the Appointed Daughter, the stipulation has been made by her Father that 'the Son born of her shall be *my* Son', this stipulation does not mean that the Son cannot serve as the Son of the Progenitor; all that the stipulation means is that he would be a 'Son' to the girl's Father.—In case he inherits his own Father's (Progenitor's) property, he shall offer the *Unitary*

Manu (9.217) himself has also declared as follows—

[1040] 'The Mother shall inherit the property of her childless Son; if the Mother has also died, then the Father's Mother shall receive the property.'

That is, when the deceased has no *Daughter*, his property should go to his *Mother*. What is meant is that the *Father's Mother* receives the property if the deceased has left no *Sakulya* (Agnate) at all. That this must be so is due to the fact that it has been definitely laid down that in the absence of the *Mother*, the property goes to the Father, then to the Brother and so on.*

Shrāddha to that Father, and the *Pārvaṇa Shrāddha* to his Mother's Father and the Father and Grandfather of this latter—(*Sarvajñanārāyaṇa*).

The term '*Dauhitra*' here must be the Son of the Appointed Daughter; in the preceding sentence he has been declared to be entitled to receive the entire property of his Mother's Father; in the first sentence of the present text, he is declared to be the inheritor of the property of his Father (Progenitor); and the second sentence prescribes his liability to offer the *Shrāddha* to both. The meaning thus is that the Son of the Appointed Daughter,—who is the 'Son' of his Mother's Father,—shall receive the entire property of his own Father (Progenitor), if this latter has no other Son; and he shall also offer two cakes, one to his Progenitor and another to his Mother's Father. The 'offering of the cake' stands for the performance of the entire *Shrāddha*. The purpose served by the present text is to set aside the notion that the Son of the Appointed Daughter may have regarding his having nothing to do with the inheriting of the property of, and offering the *Shrāddha* to, his Progenitor—(*Kullūka*).

Even though he is the Appointed Daughter's Son, he shall inherit the property of his Progenitor, if the latter has no other Son; and he shall offer the cake to the Progenitor and also to his own Maternal Grandfather—(*Nandana*).

In this text *Manu* has declared the title of all *Daughter's Sons* in general,—not that of the Son of the *Appointed Daughter* only—to the Maternal Grandfather's property.—The term '*pituḥ*', 'of the Father', should be understood here in the sense of the *Mother's Father*; that is why the text actually mentions the 'Mother's Father' in the next sentence.—Or the construction may be—'Just as he inherits the entire property of his Father, so he inherits the property of his Mother's Father also; because he serves the purposes of a *Son* for both'.—This is made clear in the second line.—Some people place the title of the Daughter's Son above that of the Wife and the Daughter; but that cannot be accepted; as being contrary to the order prescribed by *Yājñavalkya*—(*Vīramitrodaya*, p. 662).

What is said here is in accordance with the order of succession laid down in *Yājñavalkya's* text—(*Vibhāgasāra* 16.1–6).

'*Pituḥ*', 'Father',—stands for the *Mother's Father*—(*Dāyanirṇaya* 6.2–9).

* In the absence of the Wife, the Daughter and the Daughter's Son, the property of the deceased goes to his Mother. The second sentence lays down only a sort of favour that is to be conferred upon the Father's Mother, if the Father and Mother are dead and there are no Brothers or Nephews there—(*Sarvajñanārāyaṇa*).

The Mother shall take the property of her childless Son. Under 9.185, *Manu* has declared that the Father is to inherit the property of his Sonless Son; and in the present text it is the Mother that is mentioned as so entitled; this is in accordance with *Yājñavalkya's* text, where the compound word '*pitarau*' has been expounded in a way by which the Mother comes before the Father.—*Viṣṇu* also speaks of the property of a Sonless man going to the Wife, then to the Daughter, then to the *Parents*.—In view of all this, the property should be divided between the Father and Mother. In case the Mother is dead, it shall go to the Father's Mother; provided, the Wife, the Father, the Brother and Nephews are not there—(*Kullūka*).

If a man dies childless, his property goes to his Mother, because by reason of her having kept him in his womb and brought him up, she is superior to all other relatives. On the death of the Mother, the Father's Mother shall take the property. —*Yājñavalkya* speaks of the Father taking the property, while *Viṣṇu* also speaks of the property of the Sonless man going to the Wife, then to the Mother, then to the Father. In view of these conflicting texts the right course would be for the Father and the Mother to divide the property between themselves. Such is the opinion of *Kullūka*.—The correct view, however, is that when all the three,—Wife, Mother and Father—are alive, they shall all inherit the property.—'*Vṛttāyām*'—on her dying—(*Rāghavānanda*).

(D) When the Mother is not alive, the property goes to the Father,—according to the declaration of *Viṣṇu* (Text No. 1024).

To this same effect says *Manu* (9.185) also—

'*Childless*'—i.e. one who has left no Son or Grandson or Wife or Daughter—(*Nandana*).

If a man dies childless, his Wife, Daughter or Mother shall inherit his property, even when the Father is alive—(*Rāmachandra*).

Here *Manu* has asserted the Mother's title to inherit the property (*Mitākṣarā*, p. 729).—*Dhārēshvara* has taken this text to mean that—'Even when the Father is there, if the Mother dies, the property goes to the Father's Mother, and not to the Father; because if the property went to the Father, there would be a possibility of its going to such of his Sons as belong to other castes; while if it went to the Father's Mother, it would go to only persons of the same caste'.—This is not acceptable to our revered teacher; because Sons belonging to different castes have also been declared to be entitled to inheritance, in such texts as *Yājñavalkya* 2.125—(*Ibīd.*, p. 776).—In the absence of Brother's Sons, the property goes to the Father's Mother, *Sapiṇḍas* and *Samānodakas*. Among these, the Father's Mother comes first. The present text would mean that the claim of the Father's Mother comes first after the Mother's; if that were so, then there would be no point in the Father, Brother and Brother's Sons being mentioned in that definite order; i.e. between the Mother and the Father's Mother. For this reason we have to take the statement 'the Father's Mother shall receive the property' only as declaring the mere title of the Father's Mother to inheritance without any reference to her exact position in the order of inheritance; so that the Father's Mother would come in only in the absence of the Brother's Sons. In this manner the two texts would be reconciled —(*Mitākṣarā*, p. 779).

'*Childless*'—i.e. one who has left no Son or Wife or Daughter. The title of the Father's Mother should be understood to come in only in the absence of the Father, Brother and other *Sapiṇḍas*; because it is an established law that after the Mother's title comes the title of the Father and the rest—(*Vivādaratnākara*, p. 591).

It is only *Yājñavalkya* who has avowedly declared the precise order of inheritance; the other texts declare only the title of particular relatives, without reference to their exact position in the order of precedence;—such is the opinion of some people.—But this view cannot be accepted; the real explanation is that the term 'childless' stands for 'one who has left no Son or Wife or Daughter's Son'—(*Smṛtichandrikā*, p. 691).

In the absence of the Daughter's Son, the property goes to the Father, not to the Mother; nor to the Father and Mother jointly; because these latter views would be contrary to *Viṣṇu's* clear declaration.—As regards the present text of *Manu*, this must be taken as referring to cases where all the persons—ending with the Father—are dead. It is reasonable also that after the Daughter's Son's, and the Mother's, the title of the Father should come in. In *Yājñavalkya's* text also, where the parents are mentioned by the common term '*pitarau*', the order would appear to be *first* the Father, *then* the Mother; because the Father is directly denoted by the basic noun '*pitṛ*' itself, while the Mother is only indicated by the Dual Ending (*Dāyabhāga*, pp. 185-186).—'*If the Mother is dead*',—i.e. along with all her direct descendants. The meaning is that, on the death of the Mother, the Father's Mother *also* may inherit the property,—not to say of those beginning with the *Brother* and ending with the Father's Father; the Brother and the others being indicated by the particles '*api cha*'. The sense of the text is this—'After the direct descendants of the deceased, comes the title of the Parents, before that of the Parents' descendants; similarly, the title of the Father's Father and Father's Mother comes before that of the descendants of these latter'—(*Dāyabhāga*, p. 188).

The Mother inherits the property of her Sonless Son; when the Mother is not alive, his Father's Mother receives it—(*Vibhāgasāra* 16.1–7).

Here we have a declaration of the title of the Mother and the Father's Mother to the property of the Sonless deceased—(p. 632).—Some texts declare the Father's title as coming before the Mother's, while others hold that the Mother comes before the Father. This point must remain undecided—(*Vīramitrodaya*, p. 667).

Just as in the absence of the Father, the property goes to the Mother, so, in the absence of the Father's Father, it goes to the Father's Mother—(*Smṛtitattva* II, p. 195).

[1041] 'If a man dies Sonless, his property shall be taken by his Father: or by his Brothers.'*

(E) The title of the Brother rests upon the declaration of *Viṣṇu* (Text No. 1024).

In this connection *Gautama* says—

[1042] 'Of dead persons, the property goes to the eldest'—

That is, the eldest *Brother*.†

Manu (9.187)—

[1043] 'The property shall always devolve upon him who is the nearest to the deceased *Sapiṇḍa*.'‡

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* The Father shall take the property of that Son of his who had not been separated from him.—'*Or Brothers*'—with the Father's consent.—In case the deceased Son had been divided, then the property shall go to his Widow, and in her absence to his Daughter and the rest mentioned by *Yājñavalkya*—(*Sarvajñanārāyaṇa*).

If the deceased has left none of the principal kinds of Sons, nor a Wife or Daughter,—his property shall be taken by his Father; and by the dead man's Brothers,—only if their Mother is not alive—(*Kullūka*).

The term 'Father' stands for the Wife, Daughter, Mother and Father—(*Rāghavānanda*).

'*Sonless*'—who has left none of the various kinds of Sons.—'*Or Brothers*'—i.e. uterine Brothers—(*Nandana*).

The literal meaning of the words is quite clear; not so clear is the real purport which has been made clear by the *Sangrahakāra* in the following words—'If a man possessed of some property dies without any kind of issue, then his property is to be taken by his Father and others mentioned in the text'. It is implied, however, that the Father shall take the property in the absence,—not only of the several kinds of Sons, but of the *Wife* also (pp. 672-673).—'*Aputrasya*'—i.e. one who has left no Son or Wife or Daughter or Daughter's Son—(*Smṛtichandrikā*, p. 691).

' This shows that the property of the Sonless man goes to the Father or to the Brother—(p. 729).—This text does not lay down the order of precedence: it only asserts the right of the Father and the Brother to inherit the property in question (p. 758).—In the absence of the Father, the property goes to the Brothers—(*Mitākṣarā*, p. 775).

'*Aputrasya*'—one who has not left any kind of Son, primary or secondary—(*Vivādaratnākara*, p. 592).

The words of *Manu* are not meant to lay down any order of precedence—(*Parāsharamādhava*, p. 356).

† Where several Brothers have become separated, and have not become 'reunited', if, from among them, some one dies childless, his share goes to the eldest among them.—This also should be taken as referring to cases where the Wife, [the Daughter], the Mother, and the Father are not living—(*Vivādaratnākara*, p. 592).

‡ Among *Sapiṇḍas*, the property should go to each in the order of his proximity of relationship to the deceased. If the Father is not living, it goes to the Father's Father; failing this latter, to his Father,—i.e. the Great-grandfather. The Brother and the Brother's Sons are nearer to one than the Father's Father. The order of succession should be—Father, Brother, Brother's Son, Father's Father, and so on, then the *Samānodaka*, the *Sagotra*, the Maternal Uncle, other *Bandhus*;—the succeeding one getting the property in the absence of the preceding.—Similarly, on the death of the Father's Father, his property goes to his own *Son*, not to his *Grandson*—(*Sarvajñanārayaṇa*).

Among *Sapiṇḍas*, one whose relationship is closer,—be it male or female—receives the property of the deceased. In the absence of all the thirteen kinds of Sons, the property goes to the Wife ..... The declaration that 'the Wife shall receive maintenance only' applies to cases where she is unchaste. The title of the Wife to inheritance has been denied by *Medhātithi*; but that is wrong; such title is supported by *Bṛhaspati* .... In the absence of the Wife, comes the Appointed Daughter; then the Father and the Mother; then the uterine Brother; the uterine Brother's Sons; then the Father's Mother, and so on, the other *Sapiṇḍas*. In the absence of all the descendants of one's Grandfather, the property shall go to the

Āpastamba—

[1044] 'The nearmost *Sapiṇḍa*; in the absence of *Sapiṇḍas*, the Teacher; in the absence of the Teacher, the Pupil.'*

Yājñavalkya (2.136-137)—

[1045] 'If a man dies without a Son, his property shall be inherited by the following persons, the following one receiving it only in the absence of the preceding; such is the Law for all castes.—(1) Wife, (2) Daughters, (3) Parents, (4) Brothers, (5) their Sons, (6) *Sagotra*, (7) *Bandhu*, (8) Disciple, (9) Fellow-students.'

In regard to the term '*pitaran*' (Parents), when the question arises regarding the order of precedence between the two parents, it is the *Mother* that comes first, then the *Father*; because the present text has the same source as the text of *Viṣṇu* (Text No. 1024 above) [where the Mother has been placed before the Father].—'*Tatsutaḥ*', ('their Son')—the Son of the Brother.—'*Without a Son*'—i.e. without a Son, Grandson or Great-grandson.†

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descendants of the Great-grandfather; failing all these, it goes to the *Samānodaka*, then to the Teacher,—then to the Disciple—(*Kullūka*).

The nearmost *Sapiṇḍa* shall receive the property—(*Nandana*).

'*Anantaraḥ*'—nearly related.

Dhārēshvara has explained this text as follows:—The starting point here is the *Father*.—*Question*—the 'nearest' to the Father is the Father's Father as well as the Father's Son; when therefore both these are present, which of them shall have the precedence?—*Answer*—The Father's Son shall have the precedence;—why?—because the Father's Father has not been mentioned as normally inheriting one's property,—in such texts as 'the property of the Sonless man shall be taken by *the Father or the Brothers*'.—Thus the implication of the present text is that if there are no descendants of the Father of the deceased, the descendants of the Father's Father come in; and in the absence of the latter, the descendants of the Great-grandfather, and so on—(*Vīramitrodaya*, p. 669).

The 'nearness' of the *Sapiṇḍa* has been defined by *Manu* himself in 9.186—(*Aparārka*, p. 744).

This 'nearness' is the determining factor, not only among *Sapiṇḍas*, but also among *Samānodakas* and others (*Mitākṣarā*, p. 774).—Among Brothers, the uterine ones are the first to come in, as the relationship of the Step-brothers is a step further removed by the intervention of a different Mother—(*Mitākṣarā*, p. 777).

'*Anantaraḥ*'—near—(*Vivādaratnākara*, p. 592).

Nearness of relationship to the deceased is the determining factor in the title to inheritance—(*Vyavahāramayūkha*, p. 161).

The *Sapiṇḍa* and others shall inherit the property in the order of the proximity of their relationship to the deceased—(*Parāsharamādhava*, p. 364).

'*Sapiṇḍāt*'—among the *Sapiṇḍas* of the deceased each one shall inherit the property in the order of the nearness of his relationship to the deceased—(*Smṛtitattva* II, p. 195).

* What is meant is that when even *Bandhus* (Cognates) are not there, the property goes to the Teacher of the deceased; when even the Teacher is not there, then it goes to the pupil of the deceased—(*Mitākṣarā*, p. 789).

† '*Wife*'—the Wife meant here is one who has conceived, as declared by *Vashiṣṭha* (*vide* Text No. 904), who has clearly indicated that such Wives alone are to inherit as are pregnant.—'*Daughters*'—i.e. the Appointed Daughter. In case there is expectation of a Son being born, the Daughter shall inherit only when no *Son* is born.—Throughout the text the particle '*ēva*' has a restrictive force.—'*Parents*'—Mother and Father; though the rights of the two are joint, yet the fact that they have been mentioned in a copulative compound shows that each of them is entitled to inherit. But even though they have been mentioned in a copulative compound, yet the Mother comes first; this has been clearly asserted by *Manu* (*vide* Text No. 1040 above).—'But there is also the other text (*Manu*, Text No. 1041 above) which asserts the right of the *Father*'.—This latter text is meant for cases

where the Mother is not alive.—As for *Shankha's* text declaring that 'the property of a childless man goes to his Brothers',—this also should be taken as applying to cases where the Wife, Daughter and the rest are not there.—'*Bhrātarastathā*';—the particle '*tathā*' indicates the various kinds of Brothers; so that the Half-brother and the rest become included.—'*Gotrajas*'—in the following order:—(1) *Sapiṇḍa*, (2) *Samānodaka*, (3) those descended from a common ancestor, and (4) those descended from a common *Ṛṣi*.—'*Bandhu*'—the Maternal Uncle and other Cognates. —The '*Āchārya*', Teacher, also has got to be included, by reason of his having been euologised as 'Father'.—'*Disciple*'—the Boy whom one has initiated.—'*Fellow-students*'—those who have been initiated by the same *Āchārya*.—Among all these, the succeeding ones are entitled to inherit the property only in the absence of the preceding ones—(*Vishvarūpa*).

'*Aputrasya*'—one who has no Son, primary or secondary, living.—'*Svargātasya*' —who is dead.—'*Dhanabhāk*'—entitled to inherit the property.—Among the Wife and the rest mentioned in a definite order, each succeeding one is entitled to receive the property only in the absence of the preceding ones. This Law applies to all men. . . . . . . Some people have taken the term '*Daughters*' as standing for the *Appointed Daughter*.—But this cannot be right; because a man who has got an Appointed Daughter cannot be called 'Sonless',—the Appointed Daughter having been declared to be a kind of 'Son'.—'*Pitarau*' (Parents)—Mother and Father; these inherit the property if the deceased has left no Wife or Daughters.—In the absence of the Parents, come the Brothers,—i.e. the uterine Brothers, these being the nearmost.—In the absence of Brothers, '*Brother's Sons*'. In the absence of these latter, *Sagotras*. Among *Sagotras*, the nearmost comes first.—In the absence of *Sagotras*, come the *Bandhus*,—i.e. the Father's Sister, the Mother's Sister, the Son of the Maternal Uncle and so forth.—In the absence of *Bandhus*, the 'Disciple' —one whom one has initiated and taught the Veda.—In his absence, the '*Fellow-student*'—one having the same *Āchārya*.—On this text, some people have expressed the following opinion:—'A woman is entitled to perform acts of piety, such as charity and the like, only along with her Husband; as for pleasures, she is not to indulge in them, when a Widow; and piety and pleasure are the only two purposes served by wealth; so that, so long as the Father and other relatives are there to use the wealth for those purposes, the Widow cannot receive the property; she is to receive just enough for her maintenance; and this is all that is meant when the *Wife* is spoken of as entitled to inherit the property. Similarly when the Daughter is spoken of as inheriting the property, it refers to cases where the property left by the deceased is just enough for the Daughter's marriage. So that if the property left is more than what would be needed for the *Wife's* maintenance and the *Daughter's* marriage, then,—even though the Wife and the Daughter be there,— the property goes to the Father and other *Sapiṇḍas*.'—This, however, cannot be right. On the death of the owner of the property, the ownership of the *Wife* and the *Daughter* is already there; it has not got to be brought into existence. In fact, the ownership of the Wife over the Husband's property has been brought about by the Marriage-rite itself; and the Daughter's ownership over the Father's property has been born with herself. Hence so long as the Wife and the Daughter are there, no text can set aside their inherent rights of ownership and create those of the Father and other *Sapiṇḍas*. In case the Wife and the Daughter are not there, the rights of these other persons would be brought about without setting aside the rights of any one else. Hence what is meant by the present text is that the Father and the rest are entitled to inherit the property only in the absence of the Wife and Daughters. Nor are women precluded from such pious acts as Charity and the like, which do not require the use of Vedic *Mantras* or of the Consecrated Fires— (*Aparārka*).

Here we have the order of precedence among the several classes of 'Heirs', on the failure of *Sons*. One who has not left any of the twelve kinds of Sons is called 'Sonless'; when such a person has 'gone to heaven',—i.e. to a region other than the Earth,—the person entitled to inherit his property is each succeeding one in the absence of the preceding ones, among those mentioned in the list consisting of the '*Wife*' and the rest.—'*This is the Law for all castes*',—i.e. (*a*) those born in the natural order of 'mixed castes', (*b*) those born in the inverse order of 'mixed castes', and (*c*) those belonging to the primary castes, *Brāhmaṇa* and the rest . . . .

(I) First of all, the Wife is the person entitled to inherit the property. The 'Wife' meant here is the *duly married Wife*,—the derivation of the word '*patnī*' connoting *association at sacrificial performance* (which can apply to the duly married Wife only). The Singular Number in 'Wife' is in reference to the *caste*; so that if the deceased has left several Widows, belonging to divided castes, they are to divide

the property among themselves in accordance with the shares prescribed for the Wife of each caste . . . . . . There are several texts declaring this *first* claim of the Wife; such as Texts No. 1024, 1027, and others.—On the other hand there are others which, like *Manu* (9.217, 185), *Nārada*, *Kātyāyana* and *Shaṅkha*, declare the first claim to be of the Father or Brother, or the Mother and so forth.

Out of all these conflicting texts, *Dhārēshvara* has deduced the conclusion that the rule that 'the Wife shall inherit the property refers to the Widow of the separated Brother who is desirous of being 'appointed' to bear a child to her deceased Husband.—*Question*—'What is there to indicate that the rule applies to such a Widow?'—The *answer* is that in view of the texts declaring that 'the Father shall inherit the property of his Sonless Son', it is necessary to qualify the rule laying down the title of the Wife; and we cannot find any other qualification save the said *desire for 'appointment'* to bear a child; also because of *Gautama's* declaration to the effect that 'the persons related through the *Piṇḍa* and the *Gotra* shall inherit the property of the childless person, or his Widow shall inherit his property *if she desires a child'*. *Manu* (9.146) has also declared that when the separated Brother dies his Widow has a right over his property only *through her child,* not otherwise.—In regard to *unseparated* Brothers also, *Vashiṣṭha* forbids 'appointment' sought for only with a view to inheriting property; which also shows that the Wife is entitled to inherit property only through 'appointment'. In cases where there is no 'appointment', the Widow is entitled to maintenance only; as declared by *Nārada* and *Yājñavalkya* (2.142).—Further, the sole purpose served by the property of Twice-born persons is the performance of sacrifices; and women are not entitled to such performance; consequently, it is not right that they should inherit property on their own account.

The above view of *Dhārēshvara* is not right. In the text itself there is nothing to indicate any reference to the 'appointment' of the Widow; nor does the context bear any relation to it.—Then again, is it the 'appointment' or the child born of the 'appointment' that makes the Widow entitled to the inheritance?—If it is mere 'appointment' that entitles her, then she should be entitled to it even though she may not bear any child. If, on the other hand, it is the Son born that entitles her to inheritance, then, in that case, that Son himself would inherit the property as the *Kshetraja* 'Son' of the deceased, and there would be no point in mentioning the Wife as the 'heir'.—Some people have held the view that the connection of the woman with property can only be either through her Husband or through her Son.—But this cannot be right; as it would be contrary to many direct texts—e.g. *Manu* (9.194) where the six kinds of *Strīdhana*, Woman's Property, have been set forth. Further, the present text has been put up to meet cases where *all kinds* of 'Son' (including the *Kshetraja*) are non-existent.—As regards *Vashiṣṭha's* text which has been cited in support of the view that it is only the 'appointed' Widow that is entitled to inherit property;—what is meant by that text is that the Widow is to receive the property of the childless Husband *if she be desirous of obtaining children,* but that the property goes to the *Sapiṇḍas* and *Sagotras* or to the Widow; so that the Wife may either seek to obtain a child by 'appointment' or may remain self-controlled and chaste; so that the begetting of the child is only an optional course of conduct open to her. Further, it is only right that only the chaste Widow should inherit the property, not the one who has undergone 'appointment' and is object of disrespect among people; specially as the practice of 'appointment' has been censured by *Manu* (9.64).—From *Nārada's* text also (13.24 and 26), it is clear that childless Wives of 'reunited' coparceners are entitled to maintenance only. . . . . . . As regards the argument that the wealth of twice-born men is meant for sacrifices which women cannot perform,—if all property were meant for sacrificial performance, then there would be no possibility of the performance of any acts of charity, etc. which would go against the express declarations of *Manu* (2.96), *Yājñavalkya* (1.115) and others.—As regards the argument that women should never be independent,—she may not be independent; but why should that be inconsistant with her inheriting property? The texts of *Kātyāyana* and *Nārada* which declare that mere livelihood should be provided for women, clearly refer to 'kept women'; as the word used is always '*yoṣit*', 'woman' not '*patnī*' 'Wife'. In the present text however, we have the word '*patnī*', which stands for the *married Wife*; so that there would be no inconsistency or impropriety in a chaste and legally married Wife inheriting property. Thus the clear meaning of the text comes to be that *when a divided coparcener, who has not been 'reunited', dies without a Son, his property should first of all go to his Wife.*

This also disposes of the view of *Shrīkara* and others that the present text refers to cases where the property concerned is not large. In fact, in 2.115 and 123,

Yājñavalkya has himself declared the Wife to be entitled to a share equal to that of the Sons,—even in the presence of Body-born Sons. Under the circumstances it must be sheer illusion to hold that the Widow of the Sonless man should not receive anything more than mere maintenance.

Nor can it be right to hold that—'if the property is a large one the Wife shall receive only maintenance, while when it is small she shall receive a share equal to that of the Son'.—Such an explanation would be a diversity in the rule; the same injunction being taken to mean one thing in one case, and a totally different thing in another case.

Another view that has been held is as follows:—'The generally accepted law being that the Widow is to get just enough to maintain her,—if a Sonless man dies leaving a *large* property, his Widow shall receive just her maintenance, and the bulk of the property shall go to the Brothers of the deceased; but in cases where the property left is just enough to maintain the Widow,—or even less,—then the whole of it shall go to the Widow. This is what is laid down in the present text'.

This explanation also our Teacher [*Vishvarūpa*—says the *Bālambhaṭṭī*] does not accept. As a matter of fact, *Manu's* text speaking of 'the Father or the Brothers taking the property' of the Sonless man lays down only an alternative option; it does not lay down an order of precedence, whereby the Father would have the *first* claim, then the Brothers; it only asserts that the Father and the Brothers are entitled to inherit the property; and such an assertion of mere title could be taken as referring to cases where the *Wife*, the *Daughter* and others are not there.—As for *Shaṅkha's* text, it refers to the case of 'reunited' Brothers.

Lastly, *Hārīta* has declared that 'if the Widow is young and ill-tempered, etc. etc.' (Text No. 1029), where it is said that 'she shall receive just enough to keep her alive'.—But this refers to cases where the Widow is suspected of infidelity and hence is not entitled to receive the property. This very text implies that if the widow is not suspected of infidelity ('ill-tempered, etc.'), she should receive the entire property.

Thus the established law is that '*if a man, who has been divided and has not become reunited, dies childless, his entire property goes to his chaste Wife*'.

(II) *In the absence of the Wife, the Daughters receive the property.* We have the Plural Number in 'Daughters' for indicating that Daughters belonging to the same caste shall receive equal shares and those belonging to different castes, unequal shares.—Among the Daughters, if there is one married and another unmarried, then the latter shall receive the property.—If one Daughter is *settled* (i.e. with property of her own), and the other *unsettled*, then the latter shall receive the property. Because *Gautama's* declaration, that 'the *Strīdhana* of the Mother goes to those Daughters who are unmarried and unsettled', applies to the Father's property also.—The present text cannot be taken as referring to the *Appointed Daughter*, because she has been declared to be '*equal* to the Body-born Son'.

(III) The particle '*cha*' implies that, *in the absence of Daughters, the property goes to the Daughter's Son*; as declared by *Viṣṇu*—'*Aputrapautrasantānē*, etc.) and by *Manu* 9.136.

(IV) *In the absence of Daughters and Daughters' Sons, the property goes to the Parents.* As between the Parents, the Mother comes first, and then the Father; as in the expounding of the compound, the *Mother* is named first; and also because the Father is common among a large number of Sons, while the Mother is not so common; and as such she is more nearly related to her Son; hence hers should be the first claim, according to the principle enunciated by *Manu* (9.187) regarding the 'nearest *Sapiṇḍa* inheriting the property'.

(V) *In the absence of the Father, the property goes to the Brothers*; according to *Manu* 9.185.—Among Brothers, the property should go to the uterine Brothers; because Half-brothers would be one degree further removed. It is only when the uterine Brother is not there that the property goes to the Half-brothers.

(VI) *In the absence of the Brothers, the property goes to the Brother's Sons*,—in the order of their Fathers. When there are Brothers and Brother's Sons, the latter have no right to the property; because the Brother's Sons have been declared to be 'heirs' only when no Brother is there. But in a case where one of the several Brothers has died childless, all his surviving Brothers become equally entitled to the property; if then prior to the division of the dead Brother's property, another of the Brothers dies, then the Sons of this latter will have derived their title to the said property of the previously dead Uncle, through their Father; so that when the property comes to be divided, those Sons shall receive the share that would have been their Father's if he had been alive.

(VII) *In the absence of Brother's Sons, the property goes to the Sagotras*; these being—(1) the Father's Mother, (2) the *Sapiṇḍas,* and (3) the *Samānodakas.* Of these, the first to receive the property would be the Father's Mother, in accordance with *Manu* 9.217.—In the absence of the Father's Mother, it goes to the *Sagotra-Sapiṇḍas*—i.e. the Father's Father and so forth; the *Sapiṇḍas belonging to other Gotras* being treated as *Bandhus.*—If there is no descendant of the dead man's Father, the property goes to the following, in this same order:—(1) Father's Mother, (2) Father's Father, (3) Father's Brothers, (4) Father's Brother's Sons.—If there is no descendant of the Father's Father, then the property goes to the *Sagotra-Sapiṇḍas,* in the following order—(1) Father's Father's Mother, (2) Father's Father's Father, (3) the Sons of (2), (4) the Sons of (3) and so on,—down to the seventh degree.—In the absence of the *Sagotra-Sapiṇḍas,* the property goes to the *Samānodakas*; these are persons up to the seventh degree beyond the *Sapiṇḍas.*

(VIII) *In the absence of Sagotras, the property goes to the Bandhus* (*Cognates*). These are of three kinds:—(1) one's own *Bandhu,* (2) one's Father's *Bandhu,* and (3) one's Mother's *Bandhu.* These have been enumerated in Text No. 1050 below.—Among these, by virtue of proximity, one's own *Bandhu* comes first, then the paternal *Bandhu,* then the maternal *Bandhu.*

(IX) *In the absence of Cognates, the property goes to the Teacher,*—and to the *Disciple* when the Teacher is not alive. This has been expressly declared by *Āpastamba.*

(X) *In the absence of Disciples, the property goes to one's Fellow-student,*—i.e. the man along with whom one had been initiated and carried on his Vedic study.

(XI) *In the absence of the Disciple, the property may go* to any Vedic Scholar; according to *Gautama.* In the absence of Vedic Scholars, the property may go to any *Brāhmaṇa,* as declared by *Manu* (9.188). Under no circumstances shall the King take the property of the *Brāhmaṇa.*—As regards men of the *Kṣattriya* and other castes dying childless, if there is none of the declared 'heirs' there, the property goes to the King, as declared by *Manu* (9.189).

(*Mitākṣarā*)

[On the above, the *Bālambhaṭṭī* has the following notes:—The particle '*ēva*', 'alone', is to be understood after every one of the relatives mentioned; so that, so long as the preceding one is there, the succeeding ones remain excluded.—The 'Brothers' include the *Sisters* also.—The term '*tathā*', qualifying the *Brothers,* is meant to include those also that had been separated and had not become reunited.—'*Tatsutaḥ*' is to be expounded as '*tayoḥ sutaḥ*', i.e. *the Sons and Daughters of both Sisters and Daughters.*—The term 'Son' includes the Grandson and the Great-grandson also.—If the Wife of the same caste is not there, then the Wife of a different caste may inherit. It is only the *Shūdra* woman that becomes entirely excluded, as, even though married, she is not entitled to be called '*patnī*'.—Some people have held that, in the absence of the Wife, the property should go to the *Daughter-in-law,* not to the *Daughter*: because being the half-body of the Son, the former has better claims.—This however is not right, because on the ground stated, the Daughter-in-law should have come before the *Wife* also; though in reality the Daughter-in-law comes after the Grandmother.—That the particle '*cha*' includes the *Daughter's Son* has been added in order to make clear an implication, without which the original text would remain defective.—Though *Vijñāneshvara* has mentioned the *Daughter's Son* only, yet, the *Daughter's Daughter* also should be taken as an 'heir' in the absence of the *Daughter's Son.*—In reality, between the two Parents, the Father should come first, then the Mother; as in the entire law of inheritance, the Father is always mentioned before the Mother.—It has to be noted that after the *Mother* comes the *Step-mother*; as she also is included under the denotation of the term 'Mother'.—The term 'Brother' stands for the *Brother and Sister,*—the latter coming after the former.—Similarly '*Brother's Sons*' includes both Sons and Daughters of the Brothers; as also the Sons and Daughters of the Sisters.—'*Sons of the Father's Sister*'—in all these names, the '*Son*' includes the *Daughter* also.—If there are several disciples belonging to the same caste as the deceased Teacher, they shall divide the property equally.]

These texts describe the persons who are to inherit the property where the deceased has left none of the twelve kinds of Sons.—'*Aputrasya*'—one who has left no 'Son' or Grandson or Great-grandson.—(1) The *Wife* is the first to inherit the property; the 'Wife' being one who has been duly married. *Kātyāyana* has laid down the condition that the Widow should be *chaste*; so that if she is *not* chaste, she does not get the property.—(2) In the absence of the *Wife,* the property goes to those *Daughters* who belong to the same caste as the Father and who are *unmarried*

at the time. Some people take this as standing for the *Appointed Daughter*. This is not right; as the Appointed Daughter, having been declared to be the third kind of 'Son', and 'equal to the Body-born Son', would inherit the property before the *Wife*. In reality, the term 'Daughter' here stands only for that girl who has not been 'appointed' in the formal manner, and yet in regard to whom, there is a suspicion of having been 'appointed' by the deceased in his own mind.—(3) '*Pitarau*' *Parents*—Mother and Father. The property goes to the Father, then to the Mother; such being the order of precedence sanctioned by *Kātyāyana* and *Viṣṇu*. The opinion of the *Mitākṣarā* on this question, therefore, is open to question.—(4) In the absence of the Mother, the uterine Brothers come in; then the Brother's Son; then the *Sagotra, Sapiṇḍa*, the *Sakulya* and so forth in the order of proximity of their relationship to the deceased.—In the absence of all these, the property goes to the *Bandhus*.—In the absence of the *Bandhus*, it goes to the *Disciples*;—in the absence of these, to *Fellow-students*.—The particle '*cha*' indicates the title of the *Step-brother*, in the absence of the *uterine Brother*.—The term '*tathā*' indicates the title of the Father's *Bandhus*, and also that of the *Teacher*, in the absence of the *Mother's Bandhus*.—In the absence of all these, the property of the *Brāhmaṇa* goes to such *Brāhmaṇas* as are learned in the *Veda*; but that of the other castes goes to the King, —says *Nārada*—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

What is meant is that among these,—the Wife, Daughter, Mother, Father, Brother, Brother's Son, *Sagotra, Bandhu*, Disciple and Fellow-student,—each succeeding one inherits the property in the absence of the preceding.—'*Sonless*'—this implies the absence of the Grandson and Great-grandson also; as has been pointed out by the author of the *Prakāsha*; and this is quite right; such being the custom also.—Though the use of the collective term 'Parents' would indicate the joint title of the Mother and Father, yet—in view of the text that 'the property of the Sonless man goes to the Mother'—it is the Mother who has the prior claim; and the Father comes in only if the Mother is not alive—(*Vivādaratnākara*, pp. 594-595).

If a man dies and does not leave any Primary or Secondary Sons, his property goes to his Widow—(*Vivādachandra* 24.1-10).—In the absence of the Wife and the rest down to the Mother, the property goes to the uterine Brother—(*Vivādachandra* 25.1-2).

Here we have the order of inheritance in the case of the property of a man dying without a Son or Grandson.—'*Wife*'—duly married; the singular number is in reference to the caste; so that if there are Wives of the same caste as also of different castes, they receive shares in the property in the proportion of 4, 3, 2, 1.—In the absence of the Wife, the Daughters come in.—In the absence of Daughters, Daughter's Sons.—Then the Parents—first Mother, then Father.—After the Father, come the Brothers,—among whom the uterine ones come first;—in the absence of both kinds of Brothers, come the Sons of these; first the Sons of the uterine Brother, then the Sons of the Step-brother. In a case where one of the Brothers has died (leaving no Son or Wife or Daughter or Parents),—and his property has been inherited by his Brothers,—while all this property is held jointly by all these Brothers, another one of these dies, but leaving Sons,—in this case the share of the deceased shall go to these Sons.—In the absence of the Brother's Sons, the property goes to the *Sagotras*;—then to the *Samānodakas*. The order of precedence among *Sagotras* is as follows:—Father's Mother, Father's Father, Father's Brothers,—among these, the Sons of the Grandmother come first, then the Sons of her Co-wives,—the Sons of the Paternal Uncles, Father's Father's Mother, Father's Father's Father, Sons of this latter, their Sons, and so on till the seventh degree of ascent. Beyond the seventh degree, the *Sapiṇḍa* relationship having ceased, the *Samānodakas* come in. And as before, the priority shall be determined by the nearness of relationship to the deceased—(*Madanapārijāta*, pp. 672–674).

'*Sonless*'—without any of the twelve kinds of 'Son'.—This rule is applicable to all castes. The Wife meant is one who is duly married. The order of precedence is as follows:—Wife, Daughter, Daughter's Son, Mother, Father, Brother, Brother's Son, Father's Mother, Father's Father, Sons of this last, Sons of these Sons, and so on, to the seventh degree of ascent;—after that, on the extinction of all *Sapiṇḍas*, it goes to the *Samānodakas*, who extend to the seventh degree beyond the *Sapiṇḍas*, or to that stage up to which the parentage and name continue to be known—(*Parāsharamādhava*, p. 353).

Prior to every one else, comes the *Wife*—(*Dāyabhāga*, p. 151).—The Wife's right is established by the mere absence of Sons, Grandsons and Great-grandsons (*Ibid.*, pp. 160-163).—Among the Wives, first comes the Wife belonging to the same caste as the Husband, then the one belonging to the next lower caste—(*Dāyabhāga*, p. 167).

Kātyāyana—

[1046] 'On the death of a divided member of the family,—if he has left no Son,—his Father will take the property; or his Brother or Mother or Father's Mother; in this same order of precedence.'

The alternatives here set forth are fixed; the meaning being that—of the property left by the deceased, the portion that might have been acquired (before the division) by the Father shall go to the Father, and that acquired by the Brother shall go to the Brother and the rest.*

Paiṭhīnasi—

[1047] 'If a man dies leaving no Son or Wife, his property goes to his Brother; in the absence of the Brother, his Mother and Father should obtain it.'

Dēvala—

[1048] 'The property of the Sonless man shall be divided among themselves by the uterine Brothers who are equal; by equal Daughters, by the Father if living, by Half-brothers belonging to the same caste, by

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If a man dies without leaving any of the twelve kinds of Sons, his property goes to the persons mentioned here, each succeeding one taking it only in the absence of the preceding.—In the presence of the duly married Wife, those married in the lower forms of marriage do not receive the property—(*Vīramitrodaya*, p. 623).—This text refers to cases where the deceased has been a divided member of the family and had not become 'reunited'. Such is the opinion of *Vijñānēshvara*, *Lakṣmīdhara*, *Smṛtichandrikā*, *Vishvarūpa*, *Medhātithi*, *Madanaratna* and many others.—When the text speaks of the man dying *without Sons*, the term 'Son' includes the Grandson and the Great-grandson also; as it is only in the absence of all these that the Wife shall inherit the property—(*Vīramitrodaya*, pp. 640-641).

If a man who had been divided—and not reunited—dies, his property shall be inherited in the order here laid down. That Wife alone shall inherit who is devoted to her Husband, not one who is unchaste—(*Vyavahāramayūkha*, p. 137).

The particle '*cha*' includes the Daughter's Son—(*Dvaitaparishiṣṭa*, p. 42).

'*Pitarau*'—i.e. (1) Mother, (2) Father.—'*Tatsutaḥ*'—i.e. the Nephew, Brother's Son.—'*Aputrasya*'—one who has no Son, Grandson, etc.—(*Vibhāgasāra*, 16.2-1).

The terms '*gotraja*' and '*bandhu*' stand for all the relatives beginning with the Brother's Son and ending with the *Samānodakas*—(*Dāyanirṇaya* 9.2-2).

* The 'absence of the Son' is mentioned only by way of illustration; it should be understood to mean 'absence of Son, Wife and Daughter'—(*Aparārka*, p. 745).

In the phrase 'if he has no Son', the 'Son' stands for all those whose relationship to the deceased is closer than that of the Father; so that what is meant is the absence of Son, Wife, Daughter and Daughter's Son,—who confer upon the deceased more spiritual and material benefit than the Father, and as such are 'nearer' to him;—in the absence of all these, the property shall go to the Father. In the absence of the Father, it goes to the Brother; in the absence of the Brother, it goes to the Mother; and in the absence of the Mother, it goes to the Father's Mother.—'*Order*'—i.e. the order in which they are named here—(*Smṛtichandrikā*, p. 600).

What is meant is that in the event of the Widow becoming unchaste, the property shall be taken by the Father and others—(*Parāsharamādhava*, p. 356).

Here the *Wife* is not even mentioned—(*Vīramitrodaya*, p. 683).

What is meant is that the portion that had been acquired by the Father should go to the Father and that acquired by the Brother should go to the Brother—(*Dvaitaparishiṣṭa*, p. 2).

The option set forth here is restricted; so that what had been acquired by the Father goes to the Father, what had been acquired by the Brother goes to the Brother, and what had been acquired by the Father's Mother should go to the Father's Mother—(*Vibhāgasāra* 16.2-3).

The Father's title comes before that of the Mother,—because (*a*) the Father may offer cakes to his dead Son, (*b*) because of *Manu's* declaration that between the seed and the womb, the seed is the more important.—*Vāchaspati Mishra* therefore is not right when he says that the Mother comes before the Father—(*Dāyanirṇaya* 7.1-2).

Mother, by Wife;—in due order. In the absence of these, the co-resident *Sakulyas* shall take it.'

'*Equal*';—this qualifies 'the uterine Brothers'.—'*Savarnā bhrātaraḥ*'—the Half-brothers, etc. belonging to the same caste.

Perceiving that the order of precedence set forth by *Dēvala* is at variance with that set forth by *Yājñavalkya* (Text 1045) and *Viṣṇu* (Text 1024), *Halāyudha* has held the term '*Yathākramān*' ('in due order') in *Dēvala's* text to mean 'in consonance with the order of precedence laid down by *Yājñavalkya*'.—Such also is the opinion of the author of the *Kalpataru*, who has quoted *Yājñavalkya* and *Viṣṇu* after having quoted *Dēvala*.

This however is not satisfactory. By the term 'in due order' used by himself, a writer can never mean the *order* laid down by someone else, which order is contrary to the one laid down by himself. Because there is a good deal of confusion involved by abandoning what is present before the eyes and admitting what is not there; and also because this explanation does not remove the inconsistency in the order mentioned by *Paiṭhīnasi*, the right view therefore is that the order laid down by *Viṣṇu* and *Yājñavalkya* is applicable to *ancestral property*, while that laid down by *Paiṭhīnasi*, *Dēvala* and others applies to property other than the ancestral. This is the opinion of the *Ratnākara*.*

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* The first claim to succession is of the uterine Brothers—(*Aparārka*).

Hence the Brother's is the first claim, and the Wife's is the last. Herein lies its opposition to what has been declared by *Yājñavalkya*. Some people reconcile this difference by asserting that the Brother's is the prior claim in cases where the Brothers had separated and then *reunited*, while the Wife's prior claim applies to cases where the Brothers had separated, but not *reunited*—(*Dāyabhāga*, p. 154).—'*Tulyāḥ*', 'equal',—i.e. belonging to the same caste as the Father.—'*Brothers of the same caste*'—i.e. the Step-brothers.—The order in which the inheritors are mentioned here does not mean that this is the order of precedence among them; all that is meant is that all these are entitled to inherit the property and they shall inherit it in the order laid down by *Viṣṇu* and *Yājñavalkya*. That this is so is clear from the presence of such particles as '*vā*' and '*api-vā*', which signify *option* and hence indicate that no significance attaches to the order in which the persons are named in the text—(*Dāyabhāga*, p. 169).—In this series of Heirs, we do not find the Brother's Son; from which it follows that the latter would be entitled to succeed only in the absence of the relatives named.—The declaration (of *Manu*) that 'if one of several Brothers get a Son, all others become *with Son* through that Son', applies only to the liability to perform *Shrāddhas*—(*Dāyabhāga*, p. 191).

'*Dhriyamāṇaḥ*'—living.—The particles '*vā*' and '*api-vā*' clearly indicate that no hard and fast rule is meant to be laid down in regard to the precise order of precedence among those named—(*Smṛtitattva* II, p. 169).

'*Tulyāḥ*'—qualifies the 'uterine Brothers'.—*Father, if living*'—and *if desirous of having the property*.—According to *Halāyudha*, '*in due order*' means 'in accordance with the order prescribed by *Yājñavalkya*'; and on this basis, he has raised the question of the present text being in conflict with *Paiṭhīnasi* and others, and has tried to reconcile the two by pointing out that the persons beginning with the 'Wife' and ending with the 'Vedic Scholar' are entitled to inherit the property of the Sonless *Brāhmaṇa*, and those ending with the 'King' are entitled to inherit the property of the Sonless *non-Brāhmaṇa*. In *Dēvala's* text, there is no order of precedence laid down; hence the order has to be learnt from the texts of *Yājñavalkya* and *Viṣṇu*. This same is the opinion of the *Kalpataru* also.—In reality however, the text of *Paiṭhīnasi* refers to property other than that acquired by one's Father, Grandfather and other ancestors,—which goes to the *Brothers* first; and then to the Mother and so forth—(*Vivādaratnākara*, pp. 593-594).

The conflict among the various texts regarding the exact order of succession has been sought to be explained by taking only *Yājñavalkya* and *Viṣṇu's* texts as laying down the strict order of succession, and all the other texts as declaring only the title of the persons named, to succession, without any relation to the exact order of precedence.—But this explanation is not satisfactory. All the texts declare the order of succession: the differences are due to consideration of the

Baudhāyana—

[1049] 'In the absence of *Sapiṇḍas, Sakulyas* shall take the property; in the absence of *Sakulyas,* the Teacher, the Disciple or the Priest; in the absence of these, the King.'

In the absence of *Sagotras,* the *Bandhu* shall take the property,—in accordance with the declaration by *Yājñavalkya* (Text No. 1045 above).

This *Bandhu* is of three kinds:—(1) One's own *Bandhu,* (2) the Paternal *Bandhu,* and (3) the Maternal *Bandhu.* These are as follows:—

[1050] '(A)—One's own Father's Sister's Sons, one's own Mother's Sister's Sons, and one's own Maternal Uncle's Sons—are to be known as *one's own Bandhus.*—(B) The Father's Father's Sister's Son, the Father's Mother's Sister's Son and the Father's Maternal Uncle's Sons—are to be known as the *Paternal Bandhus.*—(B) The Mother's Father's Sister's Son, the Mother's Mother's Sister's Son and the Mother's Maternal Uncle's Son—are to be known as the *Maternal Bandhus.*'

The title of these to succession is in the same order of precedence in which they are named here.—The same opinion is found in *Bālarūpa* also.

The property of the dead man, in the absence of all the Heirs above described, is to be taken by the King,—excepting the property of the *Brāhmaṇa.*—This is what has been declared by *Manu* (9.184)—

[1051] 'The property of the *Brāhmaṇa* shall never be taken by the King; such is the Law. In the case of other castes, the King shall take the property in the absence of all (Heirs).'*

Dēvala—

[1052] 'In all cases where there is no Heir, the King shall take the property, excepting the property of the *Brāhmaṇa.* The property of the *Brāhmaṇa* which there is no one to inherit, the King shall make over to Vedic Scholars.'

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qualifications of the persons concerned; and also the amount of benefit conferred by the particular person upon the deceased owner—(*Vīramitrodaya,* pp. 668-669).

The *Dvaitaparishiṣṭa* (p. 43) reproduces the words of *Vivādachintāmaṇi.*

'*Savarṇā bhrātaraḥ*'—Half-brothers—(*Vibhāgasāra* 16.2–6).

* 'In the absence of all Heirs'—down to the Disciple—(*Sarvajñanārāyaṇa*).

The rule of the Law is that the King shall never take the property of the *Brāhmaṇa*; in the absence of *Brāhmaṇas* possessing the requisite qualifications, the King shall make over the property to any ordinary *Brāhmaṇa.* The property of the *Kṣattriya* and others, however, the King himself shall take over; if there is no one of those who have been declared to be entitled to inherit the property—(*Kullūka*).

'*Nṛpa*', i.e. the Guardian of the Country—(*Aparārka*).

The King shall never take the property of the *Brāhmaṇa;* that of the *Kṣattriya* and other castes,—in the absence of all heirs, down to the Fellow-student,—shall be taken by the King—(*Mitākṣarā,* pp. 790-791; also *Madanapārijāta,* p. 675).

'*Nṛpa*'—i.e. the Guardian of the Country and the Town—(*Smṛtichandrikā,* p. 698).

The *Brāhmaṇa's* property shall never go to the King; that of the *Kṣattriya* and others goes to the King, if there are no heirs—(*Parāsharamādhava,* p. 355).

'In the absence of all',—including even the *Brāhmaṇa*—with the exception of the property of the *Brāhmaṇa,* the property of all heirless persons shall go to the King—(*Dāyabhāga,* p. 217).

'*Adāyakam*'—to which there is no Heir.
Bṛhaspati (25.67)—

[1053] 'Should a *Kṣattriya, Vaishya* or *Shūdra* die without a Son, Wife or Brother,—then property shall be taken by the King; as he is the master of all.' *

Baudhāyana—

[1054] 'The *Brāhmaṇa's* property, like poison, destroys the King along with his Son and Grandson; therefore the King shall never take the property of the *Brāhmaṇa*.'

Shaṅkha-Likhita—

[1055] 'The property of the Vedic Scholar goes to the *Pariṣad* (Society), not to the King.'†

'*Pariṣad*', 'Society',—i.e. the *Brāhmaṇas*.

The order of succession, in brief, is as follows:—(1) The Son,—(2) in his absence, the Son's Son,—(3) in the absence of (2), the Great-grandson;——(4) in the latter's absence, the Chaste Wife;—(6) in her absence, the Daughter;—(6) in her absence, the Mother;—(7) in her absence, the Father; (8) in his absence, the Brother;—(9) in his absence, the Brother's Son,—in his absence, the following in this order:—(10) the nearmost *Sakulya*—(11) then the remote *Sakulya*,—(12) then the Maternal Cognates; (13) and in the absence of all, the King; except in the case of the *Brāhmaṇa's* property. As regards the *Brāhmaṇa's* property some other *Brāhmaṇa* alone who may be possessed of superior qualifications can be entitled.‡

Yājñavalkya (2.138)—

[1056] 'The property of the Hermit, the Renunciate and the Religious Student is taken, in due order, by the Teacher, the good Disciple, the Spiritual Brother of the same order.'

'*In due order*'—i.e. in the inverse order; hence (*a*) the property of the *Religious Student* goes to the *Teacher*; (*b*) that of the *Renunciate*, to his *Disciple*; (*c*) and that of the *Hermit*, to another Hermit who may have been regarded as the Spiritual Brother [i.e. a *Brother-Hermit*].

Though *Vashiṣṭha* (17.52) has declared that—'those who have entered other Life-stages have no shares in property',—according to which the Hermit and the Renunciate could not have any ancestral property, yet it is possible for the Hermit to possess property accumulated during the year, and for the Renunciate to have 'property' in the form of the waist-cloth and such articles.§

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* '*Without Son, etc. etc.*'—This is meant to include all those down to the Fellow-student who have been declared to be 'heirs'. The order of succession among these having been fixed, the King could not come between any two of them—(*Vīramitrodaya*, p. 649).

† '*Pariṣat*'—stands for the *Brāhmaṇas*—(*Vivādaratnākara*, p. 598; also *Vibhāgasāra* 17.1-1).

‡ This same order is repeated in *Vibhāgasāra* 17.1-1).

§ The 'Religious Student' meant here is the *Life-long Student*.—'*Dharmabhrātā*', 'Spiritual Brother', is one who is under the same Teacher.—'*Ekatīrthī*', one belonging to the same Life-stage—(*Vishvarūpa*).

If any one of the persons mentioned here dies, his property will go to the Teacher and the rest, '*in due order*'; i.e. each succeeding one taking it in the absence

Shaṅkha—

[1057] 'The property of woman,—in the shape of the six kinds of *Strīdhana*,—and the property of minors—in the shape of their ancestral property,—shall never be escheated to the King.'

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of the preceding.—'*Good Disciple*' is the Disciple endowed with specially good qualifications.—'*Dharmabhrātā*', '*Spiritual Brother*', is one who has been initiated by the same Teacher.—'*Ēkatīrthī*' is the person belonging to the same persuasion (holding similar views), or the person living in the same sacred place, Benares and the like.—That the Hermit has some property is indicated by such texts as lay down that 'the Hermit should give his accumulated wealth during the month of *Āshvina*'. The Renunciate and the Religious Student also possess such things as the ragged clothes and the like—(*Aparārka*).

This is an exception to the general rule that 'property is inherited by Sons and Grandsons, etc. etc.'—Of the Hermit, the Renunciate and the Religious Student,—the property is taken by the Teacher, the good Disciple and the coadjutor—Spiritual Brother,—'in due order'—i.e. in the inverse order.—(*a*) The 'Religious Student' meant here is the *Life-long Student*; as for the other kind of Religious Student (the ordinary one), who is going to enter the life of the Householder,—his property goes to his Mother and other relatives. It is an exception to this general rule that we have here, regarding the *Life-long Student*, whose property is to go to his Teacher.—(*b*) The property of the Renunciate is taken by his 'Good Disciple' i.e. that Disciple who is efficient in listening to the philosophical scriptures, retaining them in his mind and regulating his life according to them. Those Disciples who are ill-behaved,—even though they be efficient teachers and the like,—are not entitled to inherit the property of the Renunciate.—(*c*) The property of the Hermit is taken by the '*Dharmabhrātrēkatīrthī*';—'*dharmabhrātā*' who has been regarded by one as his 'Brother', and '*ēkatīrthī*' is one who belongs to the same order; so that the (*Karmadhāraya*) compound word '*dharmabhrātrēkatīrthī*' stands for the 'Brother-Hermit'.—In the absence of the Teacher and all the rest, the property is taken by a person belonging to their same order as the deceased, even though he may have Sons and Grandsons.—As regards the objection that the Life-long Student and other persons belonging to orders other than that of the Householder, cannot have any property of their own,—the answer is that the Hermit may possess property, as is indicated by such texts as 'he shall accumulate wealth enough to last for a day, a month, six months, or a year, and give it away in the month of *Āshvina*';—as for the Renunciate, he has to keep the loin-slip, a covering, books on *Yoga* and other accessories and a pair of sandals.—As for the *Life-long Student*, he also has to have such property as clothes and other things necessary for the keeping of the body—(*Mitākṣarā*).

(*a*) The property of the *Hermit*, accumulated by him according to the text—'He shall accumulate wealth and give it away in the month of *Āshvina*',—(*b*) the property of the *Renunciate*, held in accordance with the text 'He shall keep the Yogic accessories and the sandals',—and (*c*) the property of the *Life-long Student*, in the shape of Clothing,—all this shall be taken by the Teacher and the rest,—'*in due order*'; i.e. each succeeding one taking it in the absence of the preceding.—'*Āchārya*'—Teacher; '*Good Disciple*'—one efficient in listening to and retaining in his mind the teachings about the *Self*.—'*Ēkatīrtha*'—Fellow-student, one who has studied under the same Teacher; this last is also the 'Brother' in 'spiritual matters',—in the performance of religious duties; he is called 'Brother' on account of having the same *Teacher*, who acts as their common 'Father'—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

The 'Religious Student' meant is the *Life-long Student*.—'*Dharmabhrātā*'—one having the same Teacher;—'*Ēkatīrtha*', one studying the same science.—'*In due order*',—i.e. each succeeding one inheritng in the absence of the preceding—(*Smṛtichandrikā*, p. 699).

'*In due order*'—i.e. in the *inverse* order. '*Religious Student*'—The Life-long Student; the property of the student who is going to enter civic life goes to his Father and other relatives—(*Dāyabhāga*, p. 217).

The 'Religious Student' meant is the *Life-long* one. As regards the ordinary Religious Student, as it is not possible for him to have 'a Son, Wife, Daughter or Daughter's Son',—his property goes to his Father and the rest mentioned in *Yājñavalkya's* list (Text No. 1045).—The 'due order' meant here is the *inverse*

'*Ṣaḍāgamam*'—i.e. the six kinds of *Strīdhana*, defined under Text No. 953 above (*Manu* 9.194).

Manu (8.27)—

[1058] 'The King shall take care of the property owned by a minor till the time of his *Accomplishment and Return*, or till he has passed his minority.'*

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order; so that (*a*) the property of the dead Life-long Religious Student goes to his Teacher,—(*b*) that of the Renunciate, to his good Disciple,—and (*c*) that of the Hermit, to his Brother-Hermit.—'*Dharmabhrātā*' is one who has been adopted as a Brother, and '*Ēkatīrtha*' is one belonging to the same order.—The 'goodness' of the Disciple consists not in his possessing a good character, but in his efficiency to attend to, assimilate and practise the teachings of the scriptures.—The view of the *Madanaratna* however is that the 'order' meant in the present text is the same in which the persons have been named; so that the Hermit's property goes to the Teacher, and failing him, to the Disciple . . . . . The present text precludes all other likely 'heirs' and declares the persons mentioned as the only ones entitled to receive the property—(*Vīramitrodaya*, pp. 675-676).

'*In due order*'—i.e. in the inverse order; so that the property of the Life-long Student shall go to the Teacher,—of the Renunciate, to his good Disciple,—and of the Hermit, to the *Dharmabhratēkatīrthī*; '*dharmabhrātā*' is one who has been accepted as a Brother, and '*ēkatīrthī*' is one belonging to the same order.—Though all this goes against *Vashiṣṭha's* dictum that persons other than Householders can hold no property,—yet the present text may be reconciled somehow with it by taking it as referring to some little things that every man must possess—(*Vivāda-ratnākara*, p. 600).

It is the Life-long Religious Student that is meant.—'Good Disciple'—one endowed with the knowledge and due contemplation of philosophical teachings.—'*Dharmabhrātā*' is one who has been accepted as a Brother; '*ēkatīrthī*' is one belonging to the same order, i.e. another Hermit; hence the compound means a *Brother-Hermit* living near one's own hermitage.—'*Due order*' stands here the *inverse order*.—Thus the property of the Hermit, in the shape of his annual grain-supply, shall go to his Brother-Hermit; the property of the Renunciate in the shape of clothes, books and so forth, shall go to his good Disciple; and the property of the Life-long Student, in the shape of Clothes, etc., shall go to his Teacher—(*Madanapārijāta*, p. 676).

'*In due order*'—i.e. in the inverse order; so that the Teacher receives the property of the Life-long Student, the Disciple receives the property of the Renunciate and the property of the Hermit goes to another Hermit who may have been treated by the deceased as a 'Brother-Hermit'—(*Vivādachandra* 24.2-5).

The *inverse order* is what is intended here. So that the property of the Life-long Student is taken by the Teacher, not by his Father or other relatives;—the property of the ordinary Religious Student is taken by his Father and others;—the property of the Renunciate goes to his good Disciple; one who is ill-behaved receives nothing;—the property of the Hermit goes to another Hermit who has had the same Teacher as the deceased.—Or the meaning of the text may be that the property of the Hermit, the Renunciate and the Religious Student is inherited in the following order of precedence—(1) Teacher, (2) Good Disciple, and (3) the Spiritual Brother belonging to the same order; i.e. each succeeding one receiving it in the absence of the preceding.—What the dictum of *Vashiṣṭha*—'that persons of other orders do not receive shares'—means is that 'a person of one order does not inherit the property of a person in another order'; it does not mean that there is no sharing of the property among persons of the same order—(*Parāsharamādhava*, p. 365).

The order of succession meant here is the inverse one. So the Teacher is the successor of the Religious Student,—the Disciple, of the Renunciate,—and of the Hermit, another Hermit regarded by the deceased as his Brother.—In the case of the Hermit and the Renunciate, though ancestral property is not possible, yet they can have such property as the *Loin-slip* and the like—(*Vibhāgasāra* 17.1-4).

* '*Bāladāya*'—is what has been inherited by the minor. The property owned by the minor shall be looked after by the King till such time as he may return from the Teacher's house as an Accomplished Student, or till he may have passed his minority.—The second alternative of 'passing the minority' is meant for those who pass their childhood at home and are not handed over to a Teacher. In the case of one however who has entered a Teacher's House as a Religious Student,—even though he may have passed his minority,—his property shall have to be

SECTION (O)—PARTITION AMONG REUNITED COPARCENERS

On this subject, says *Bṛhaspati* (25.72)—

[1059] 'If a man who had been separated, lives again, through affection, with his Father or Brother or Uncle, he is said to be *Reunited.*'

'*Samsarga*', 'Reunion', consists in the understanding that 'among ourselves, what belongs to one belongs to all'. That there exists such an understanding among certain people is learnt from their activities which could not be explained on any other hypothesis. Such an understanding creates the ownership of each and every member of the compact over all the property that has been, is being and will be, acquired by each one of them.—But, inasmuch as the text has specifically named certain persons, it follows that there can be such 'Reunion', consisting in the pooling together of properties that had been divided, *only* with one's Father, Brother or Uncle;—such is the view of the *Prakāsha.*—This however cannot be right. Because there is the term '*punaḥ*', 'again', which denotes *repetition*; and the implication of this term is that all that 'Reunion' means simply 'the pooling of the properties that had been divided before'; this is a much simpler explanation. Thus the term 'Reunion' becomes applicable to the coming together of one with such persons also as the Uncle's Son and so forth,—in fact all those from whom 'separation' is possible; and the mention of the Father and others in the text is only by way of illustrative detail.—It is for this same reason that the *Ratnākara* and others have declared that the particle '*vā*' has been added in view of the fact that there can be no restriction regarding the person or persons with whom 'Reunion' is possible.—The view of the Moderns however is that it is much simpler to take 'Reunion' in the sense of 'the pooling together of the properties of those whose properties have been separated'; and it is not necessary to add the qualification that there should have been *previous separation* (or partition); as this only complicates matters. As for the properties being *separate*, they

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looked after until he returns from the Teacher's house.—Or the meaning may be that, in the case of twice-born persons, the 'Return' shall be the limit,—while in that of others, it shall be the 'passing of the minority'—(*Medhātithi*).

'*Anupālayēt*'—should take it under his charge and guard it.—'*Return from the Teacher's house*'—i.e. after the period of thirty-six years and so forth.—If, during this interval, there arises any need for drawing upon the minor's property,—with a view to such a contingency, the text has added the second alternative. 'Minority' lasts till the end of the *sixteenth* year—(*Sarvajñanārāyaṇa*).

In a case where the property of a minor without guardian is in the wrongful possession of his Uncle or other relations, the King should take care of it till such time as he may return from the Teacher's house after having completed the course of study; as by that time the minor will have passed over his inexperience. In a case however where on account of his incapacity, the boy returns from the Teacher's house during his boyhood, his property shall be guarded by the King till he passes his minority; the period of minority extending over sixteen years—(*Kullūka*).

'*Bāladāya, etc.*'—the property owned by a boy who has no guardian,—the King shall guard against his Uncle and others; till he returns from the Teacher's house, or—in the case of the *Shūdra* and others—till he has passed his minority—(*Rāghavānanda*).

The property owned by a minor, the King shall protect against his relatives and others who may be trying to take possession of it.—Of the two alternatives, which one shall be adopted shall depend upon such circumstances as actual need or capacity and so forth—(*Nandana*).

The property of the minor who has no relatives,—the King shall guard till he has returned from the Teacher's house, on the completion of his study—(*Rāmachandra*).

The property belonging to the minor, the King shall guard against his relatives—(*Vivādaratnākara*, p. 598).

'*Anupālayēt*'—i.e. not escheat it—(*Vibhāgasāra* 17.1–7).

may have been so either in the ordinary course of life, or through partition, —that is a different matter.—The only basis for any such *Reunion* consists in the agreement of the parties reuniting, and there is nothing to prevent such agreement between parties whose properties have been separated in the ordinary course of life (and not through partition).—If it were not so then, in a case where the man had been *separated* from his *Father*, but comes to live together with the Brother born after the death of that Father, could not be said to be 'Reunited'.—'Be it so'—it may be said.—But that cannot be right; because as a matter of fact, such persons also are to be regarded as *Reunited*.—In cases where the coparcener is a minor, the Reunion, like Partition, can be brought about only through the consent of the Mother and such others (as may be the guardians of the Minor); as such is the actual practice among people.*

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* Three kinds of '*Saṁsṛṣṭi*', 'Reunited Coparcener' have been described here—(*Aparārka*, p. 748).

The particle '*vā*' is meant to imply that the persons mentioned here are not the only kinds of 'Reunited Coparceners'; so that even when one has been separated from a coparcener in the shape of the Uncle's Son, and has subsequently come to live with him, he also is spoken of in the word as 'Reunited'.—The *Prakāsha*, however, holds that on account of the specific number of the three relatives, these are the only three kinds of Reunited Coparceners—(*Vivādaratnākara*, pp. 605-606).

'*Reunion*' does not consist in the parties living and cooking together; it consists in the pooling of these properties after having previously divided them. The term '*punaḥ*' indicates the fact of the parties having been originally reunited and then become separated.—Such Reunion is brought about by the understanding to the effect that—'over all our properties our ownership shall be joint'; it is this understanding that constitutes 'Reunion'; and this agreement is in the form 'all our past, present and future belongings shall be as much yours as mine'—(*Vivādachandra* 24.2–7).

That Son is said to be 'Reunited' with the Father who, after having separated from him, comes to live with him again, through his love for him. The implication of this is that it cannot be called 'Reunion' (in the technical sense) except when it is with the Father, Brother or Uncle; it would not be 'Reunion' when it is with the Uncle's Son, for instance . . . . . 'Reunion' does not consist in mere *co-residence*, it consists in the parties pooling their resources in the manner in which they were before separation—(*Smṛtichandrikā*, p. 700).

It is only with the Father, Brother or Uncle that one can be said to be 'Reunited' (in the technical sense)—(*Madanapārijāta*, p. 677).

The Son who had become separated from the Father—if, through affection, he joins him again, is said to be 'Reunited'. What is meant is that anyone who is in co-residence with another person is called 'Reunited'—(*Parāsharamādhava*, p. 361).

It is only in the case of parties who are by nature, normally undivided in regard to the ancestral property,—such parties for instance as the Father and Son, Brother and Brother, or Nephew and Uncle,—that, when, after having separated, they come together again, through mutual affection,—and annulling their previous partition; they pool their belongings, coming to the understanding to the effect that 'What is yours is mine and what is mine is yours', and come to live together in the same house and as one 'Householder',—they come to be spoken of as 'Reunited'; and not in the case of parties other than those who are naturally undivided,—such for instance, as traders who pool their resources and carry on their business jointly. Nor would the term apply to the said parties who, after being separated, merely pool their resources and do not come to the said understanding, through mutual affection—(*Dāyabhāga*, p. 160; and *Vīramitrodaya*, p. 647).

Smṛtitattva II, pp. 163-164, quotes and rejects the above view of the *Dāyabhāga* and supplies the following explanation of the text—'After partition has been effected, if, through friendliness, Son and Father, Brother and Brother, or Nephew and Uncle, come and live together,—this is what is called *Reunion*'.

'All our property—past, present and future,—shall belong to every one of us, till we separate again',—those uniting under such an agreement are called 'Reunited'. —So says the *Prakāsha*, which adds that 'such Reunion is permissible only with one's Father, Brother or Paternal Uncle'.—Others have held that 'Reunion' is the coming together of persons who have been holding separate properties.—Both

Again, *Bṛhaspati* (25.73–75)—

[1060]—'When Brothers, previously separated, have come to live in one place, through affection,—when they proceed to make a second partition, there shall be no *primogeniture.*—*

[1061]—'When any one of the Reunited Coparceners happens to die, or go away as a Renunciate, his share shall not disappear; it shall be allotted to his uterine Brother;—

[1062]—'If there is a Sister of his, she is entitled to receive a share out of that share.—Such is the Law relating to one who has left no child or Wife or Father.—†

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these views are unacceptable, on account of the presence of the word '*punaḥ*', 'again'. According to the second view, a case where, for convenience of business transactions, the Mother joins her property with the property of her minor Son, would have to be regarded as one of 'Reunion'.—Hence the view of the *Vivādaratnākara* is that the particle '*vā*' indicates *indefiniteness*; so that the meaning is that 'if a man becomes united with another from whom he had been separated, he is said to be *Reunited*'—(*Vibhāgasāra*, 17.1–8).

The meaning is as follows:—In a case where a number of persons are, by birth, *not-divided* in relation to the Father's and Grandfather's property,—but they have become *divided*,—if, through friendliness, these persons set aside their previous division and come together again as members of the Joint Family,—with the agreement that 'what is mine is yours and what is yours is mine',—these persons are 'Reunited Coparceners'.—This appellation cannot apply to a body of traders joining together—(*Dāyanirṇaya* 8.1).

* The denial of the Preferential Share due to primogeniture should be understood to pertain to the twice-born castes; as in the case of the *Shūdra*, there is no Preferential Share under any circumstances—(*Smṛtitattva* II, p. 193).

The meaning is that, though the person concerned may be entitled to a higher share, there shall be no Preferential Share in this case—(*Vibhāgasāra* 17.2-2).

'Seniority' is not taken into account in cases where there is repartition among *reunited* Brothers—(*Dāyanirṇaya* 21.1).

† Before the *previous* (initial) partition, if a member dies or becomes a Renunciate, his share disappears, and the entire property goes to his co-residents. It is not so in the case of *reunited* members; in whose case, the entire property shall not be taken by *all* the members of the joint family; the share of the dead or Renunciate member shall be assigned, not to his Wife,—as in the case of the Husband who has been separated from his coparceners,—but to the *reunited uterine Brother* of that member. No significance attaches to the Singular Number in 'uterine *Brother*'; so that the share of the said person shall go to all such uterine Brothers of his as may be among the Reunited—(*Smṛtichandrikā*, pp. 701-702).

'*Nalupyatē*'—This refers to *reunited* coparcener. The last line means that the *reunited* uterine Brother is entitled to receive the share of the dead Brother, only if this Brother has left no Son or Daughter or Wife or Father—(*Dāyabhāga*, p. 156).

Among *reunited coparceners*, if any one dies, or becomes a Renunciate, his share does not disappear; that share goes to his uterine Brother, according to *Manu* (9.212).—The sentence '*anapatyasya, etc.*' is meant to be an exclusion of other views.—Some people have offered the following explanation:—In a case where there are two *uterine Brothers*—one *Step-brother*,—and a part of their property has been divided,—after which they become reunited,—if one of the said two *uterine Brothers* dies, the proportion of his share in the *undivided* portion of the property also having been practically settled by the partial division that they have had,—what the present text does is to specifically point out that the share of the dead Brother shall be taken by his *uterine* Brother.—This, however, cannot be right; as no division ever takes place by merely *pointing out,* unless there is a *throw of dice* (drawing of lots). So it is the *dice-throw* that determines the shares—(*Vibhāgasāra* 17.2-3).

[1063]—'Among Reunited Coparceners, if any one should acquire additional property, through learning, valour and other means,—in that property, he shall have a double share, and the others shall receive equal shares.'*

'*Ēkatra*', 'in one place', (in 1060)—i.e. in one joint family, after becoming *Reunited*.—'*Primogeniture*' (in 1060)—That is, even when there may be circumstances justifying a Preferential Share, no such share shall be given. —The same authority is going to declare (in Text No. 1063) that the property acquired by any one through learning, etc. is an exception to this denial of the Preferential Share.

'*Where any one, etc. etc.*' (1061)—from among these coparceners becomes debarred,—either by death or by having entered another life-stage—from sharing in the property,—even then his share in the property does not disappear.—The question arising as to the person to whom this share should go, the answer is—'*it shall be allotted to his uterine Brother*'—i.e. to his *reunited* uterine Brother; because it is simpler to take it thus in view of the present text having the same source as the following text of *Manu* (9.212)—

[1064]—'His uterine Brothers, coming together, shall divide the property equally, as also the Reunited Brothers and consanguineous Sisters.'†

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* '*Learning and valour*' include also other conditions which would tend to connect the property with the acquirer *alone*—(*Vivādaratnākara*, p. 602).

Among *reunited* coparceners, if any one acquires more wealth by learning, valour and such other special efforts of his as would connect the property with him alone,—he is to receive a double share in that wealth—(*Vivādachandra* 26.1-10).

'*Double share*'—in the additional property acquired by him. This text lays down the partibility of that also which may have been acquired without drawing upon the reunited property—(*Smṛtichandrikā*, p. 701).

The 'double share' is to be understood as to be given only in the additional property that has been acquired—(*Madanapārijāta*, p. 680).

The 'double share' is to be given only in the additional property acquired by him, not in the entire property. This is meant to declare the partibility of that also which has been acquired without drawing upon the joint property—(*Parāsharamādhava*, p. 361).

This lays down an exception to the general rule regarding the impartibility of what has been acquired by learning, valour and the like—(*Vīramitrodaya*, p. 677).

The 'double share' for the acquirer having been laid down as the general rule, what is meant by the present text is that in the case of Reunited Coparceners, the acquirer receives two shares even in that property which has been acquired by him through drawing upon the reunited joint property; while under the general rule he receives a double share only in what he has acquired *without* drawing upon the joint property. So says *Madana*—(*Vyavahāramayūkha*, p. 147).

† If among the Brothers, some one becomes debarred, by death or renunciation or some such cause, from sharing in the property, his share does not become lost; his share shall be taken by those '*uterine Brothers*' who may have been *united* with him in property;—also '*consanguineous Sisters*',—i.e. those *unmarried*; these alone can be called '*Sanābhi*', 'consanguineous',—those *married* having gone over to the *family* of their Husbands;—also the '*reunited Brothers*'.—This should not be taken to mean that the share shall be taken—(1) by the *uterine Brothers*, as also (2) by such Brothers as may have been *reunited* to him; as in that case, those Brothers who are *not uterine*, but *reunited*, would be entitled to a share in the property. Among the *uterine Brothers*, there may be some who had become *reunited*, and others who had *not* become *reunited* to him; and in a case where both these kinds of *uterine Brothers* are present, both shall divide the property among themselves.—This will not militate against *Yājñavalkya* 2.139 (Text No. 1068 below). If however, there are no *uterine Brothers* at all, then the property shall be taken by such Step-brothers as may be *reunited* with the deceased,—and none others. Among *uterine Brothers*, even when separated, there is always some sort of *nearness*; so that the functions of the *uterine Brother* would, in a general way, be accomplished by even those that may be separated. Hence it is that among such *uterine Brothers* also as may have separated,—if one dies, his property shall go to the other *uterine Brother*, whose right over the property can never entirely disappear—(*Medhātithi*).

So that the Brothers that are *uterine*,—in case they are *not reunited*,—shall *not* obtain the said share.

What should be done with the share is that *those reunited with him*—either uterine Brothers, or Step-brothers—or uterine Sisters shall take it. That is to say, (*a*) if there is a *reunited uterine Brother*, it goes to him; (*b*) if there is no *reunited uterine Brother* it shall go to the *reunited Step-brother*;—(*c*) if there are no *reunited Step-brothers* also, then it shall go to the *uterine Sisters*; (*d*) failing such Sisters, it shall go to the Sons of the uterine Brothers; (*e*) failing these, to *non-uterine* Brothers and so forth.—But all this shall be done only if the regular heirs,—Son, Wife, Daughter, Mother, Father—are not there—(*Sarvajñanārāyaṇa*).

If among the Brothers, any one becomes deprived of his share, by becoming a Renunciate or through some other disability,—or dies,—his share shall not disappear. His *uterine Brothers*, coming together,—as also his uterine Sisters,—shall take his share in equal parts. Similarly among uterine Brothers and Step-brothers also,—those uterine Brothers and Step-brothers shall divide the property equally among themselves who may have been combined in property with the deceased.—This however should be the case only if the disabled man has left no Son or Wife or Father or Mother—(*Kullūka*).

The order is: (1) uterine Brothers, (2) reunited Step-brothers, (3) uterine Sisters—(*Rāmachandra*).

All the uterine Brothers shall divide the property among themselves,—as also his *unmarried* Sisters—(*Rāghavānanda*).

(*a*) If the man has any uterine Brothers *reunited* with him, then the property goes to these; but even uterine Brothers shall not receive the property if they had not been *reunited*.—(*b*) If there are no *reunited* uterine Brothers, all the uterine Brothers, coming together, shall divide the share equally among themselves.—(c) If there are no uterine Brothers, the property goes to the *uterine Sisters*.—(*d*) If there are no *uterine Sisters*, then it goes to Half-sisters and Half-brothers—(*Aparārka*).

The share of the person concerned does not become merged in the joint property of the Reunited Coparceners. It shall be disposed of in the following manner:—

His uterine Brothers shall divide it; i.e. it shall be divided among all his uterine Brothers—those also who were not *reunited* with him and also those that may have gone abroad—equally—(*Mitākṣarā*, pp. 831–833).—[On this, the *Bālambhaṭṭī* has the following notes:—The first sentence speaks of '*Brothers*' and the second of 'reunited Brothers'; hence *all Brothers* are meant—those *reunited* as well as those not reunited; the first sentence speaks of the Brothers as 'uterine'; hence the second sentence should be taken as referring to *Step-brothers*.—'*Sanābhayaḥ*'—uterine.—The Step-brothers meant are those of the same caste as the disabled person.]

Among *Reunited Brothers*, if any one dies or becomes otherwise disabled to possess property, his share shall go to those 'Brothers' who are 'uterine',—the adjective 'uterine' qualifying 'Brothers',—and who have been *reunited*; i.e. those who fulfill both the conditions of being *uterine* and *reunited*; as also '*uterine Sisters*'—but only those that are *unmarried*; those married having taken their Husband's *gotra*, hence no longer '*Sanābhi*', *consanguineous* with their Brothers,—says the *Prakāsha*—(*Vivādaratnākara*, p. 601).

Only such Brothers will receive that share as have been *reunited* with him; such in the view of the *Ratnākara* and the *Smṛtisāra*.—According to the *Bālarūpa* however, both the conditions should be fulfilled by the 'Brothers'—being 'uterine' as well as being 'reunited'; and what the text is meant to assert is that the *un-reunited uterine Brother* and the *reunited Step-brother* shall receive equal shares—(*Vivādachandra* 25.1-2).

In this text we have two words '*sodaryāḥ*' (uterine) and '*bhrātaraḥ*' (Brothers) in two separate sentences; hence the former should be taken as standing for *uterine Brothers*, and the latter, for *Step-brothers*. Then again, inasmuch as the term '*saṃsṛṣṭāḥ*' (reunited) occurs in the second sentence,—and as that term does not appear along with the term '*bhrātaraḥ*' in the first sentence,—it follows that such *uterine Brothers* also are meant to be included as are *not-reunited*. Thus the meaning is as follows:—(*a*) The *uterine Brothers*—even those *not-reunited*—shall all come together and divide the property among themselves;—(*b*) similarly the 'Brothers'—i.e. Step-brothers belonging to the same caste, who had been *reunited*; and (*c*) then the uterine Sisters. That is to say, all these persons—(*a*) all uterine Brothers, (*b*) Reunited Step-brothers of the same caste, and (*c*) uterine Sisters,—shall share the property equally—(*Madanapārijāta*, pp. 678-679).

Some people have held the following view:—'In a case where after some portion of the joint property has been partitioned,—the parties become *reunited*,—if one of the reunited coparceners dies, the proportion of his share in the *unpartitioned* portion also of the joint property has been determined by the aforesaid partial partition,—in accordance with the maxim of "the Rice in the Pot" (where one grain is found to be soft and cooked, the whole lot is regarded to be soft and cooked); so that, on this understanding, the share of the disabled or dead person should also be definitely assigned and indicated; and the share thus assigned and indicated shall be taken by his *Reunited uterine Brother*;—and it is in reference to this that there is the exclusion laid down in Text No. 1062 (that this rule refers to cases where the man has no child).'

This view cannot be accepted. Because the previous partial partition cannot be taken as determining the proportion of his share in the whole joint property; because that partition was related to him only because he was alive at that time. The determining and assigning of the share on his death, etc., however, could not be done without the 'casting of lots'. Hence the effect of the previous partial partition can consist only either (*a*) in the contraction (limitation) of the initial combined proprietory right of all the co-sharers, or (*b*) in the creation of the partial proprietary right of each individual co-sharer over the portions divided. So that (under this view) such a partition would give rise to such ideas in the minds of the co-sharers as 'this has fallen to your lot, not mine', 'this has fallen to my lot, not yours' and so forth; under the circumstances, if the 'casting of lots' is *simultaneous*, then the whole lot will have become divided; if it is *gradual*, then, how can the said maxim of the 'Rice in the Pot' be applicable,—the attendant circumstances being different with each case?

Yājñavalkya (2.138) also has declared as follows—

[1065]—(A) 'If a *Reunited Coparcener* has died, his *Reunited Coparcener* shall give his share to the Son that may be born to that coparcener; and he shall himself force that share (in case no such is born).—(B) It is the *uterine Brother* who will deal this with the share of the *uterine Brother*'.

The term '*jātasya*' means *living*, according to *Halāyudha*.

Others have explained the meaning of the text as follows:—

(*a*) The *uterine Brothers*, (*b*) *uterine Sisters*, and (*c*) *Step-brothers* are to divide the said share; and from the words '*sarvē*' and '*sahitāḥ*', it is clear that (*a*) Reunited Step-brothers, (*b*) uterine Brothers, and (*c*) uterine Sisters—all conjointly—do the dividing.—Some people have explained the meaning to be as follows:—(*a*) The *uterine Brothers* shall take the said share, if they had been *reunited* with the owner, *not* if they had not been so *reunited*;—(*b*) in the absence of *reunited uterine Brothers*, all *uterine Brothers* shall share it equally among themselves; (*c*) in the absence of all *uterine Brothers*, the *uterine Sisters* shall take the property; (*d*) in the absence of *uterine Sisters*, the *Step-brothers* shall take it.—This explanation, however, cannot be accepted; as it involves several forced constructions and is inherently inequitable—(*Smṛtichandrikā*, pp. 703-704).

The purely *uterine Brothers* are mentioned by the term '*sodaryāḥ*'; and the *Reunited Step-brothers*, by the term '*saṁsṛṣṭāḥ*'; and what is meant is that both these groups have to do the dividing jointly—(*Dāyabhāga*, p. 204).

(*a*) In the first place, the property should go to the man's *heirs*; (*b*) if there are no *heirs*, it goes to his *uterine Brothers*,—even those that may not have been *reunited*,—as also those that may have been reunited with him; also those Step-brothers who may have been *reunited* with him, and also the *uterine Sisters*;—all these shall divide the property among themselves—(*Vīramitrodaya*, p. 670).

The terms '*sodaryāḥ*' and '*bhrātaraḥ*' should be construed together, meaning *uterine Brothers*. Also those who were '*saṁsṛṣṭāḥ*—i.e. the Wife, Father, Grandfather, Step-brother, Uncle's Sons and others, who may have been *reunited* with the person—(*Vyavahāramayūkha*, pp. 149-150).

In a case where the Father and Son have become *reunited*, and there is another Son that 'was born' (*jātasya*) to the Father after the previous partition,—when the Father dies, the Son who had been *reunited* with him shall give the Father's share to the said Son.

What the text '*samsṛṣṭinastu, etc.*' means is that—when a *Reunited Coparcener* has died, the person entitled to his property is the other Reunited Coparcener; but when the 'reunion' has been between a *uterine Brother* and a *non-uterine* Brother, it is the *uterine Brother* that is so entitled.

Thus, then, where there has been 'reunion' between Father and Son,—if there is another Son who is still separated from the Father,—the share of the Father goes to his *Reunited Son*, not to the one who has not been reunited. Because what the text has asserted is without any reservation. This is only right, because the fact of there being 'reunion' between Father and Son also has been clearly declared in *Bṛhaspati's* text (No. 1059 above). Specially because the rights of the other Sons over the (separated) Father's property have been set aside by the previous separation (and partition); while the right of the *Reunited Son* over that property has been created by the *Reunion* itself.—It cannot be right to argue that—the 'limitation that the deceased should be *childless*, contained in Text No. 1062, what has been asserted is not possible'.—Because what has been said there refers to the Son born after the 'Reunion'.—Thus then the upshot of the whole is that the property of the *Reunited Father* goes to the *Sons born after the previous partition*,—and if there are no such Sons, it goes to the *Reunited Son*, or the *Reunited Brother* and others,—but not to one who has been *not-reunited* (i.e. separated).*

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* When a person, having become separated, comes, for some reason, to unite and live with the Father or Brother, from whom he had separated, he is called '*samsṛṣṭī*', 'Reunited'. While such *reunited* Father and Sons are living together,—if another Son happens to be born to the Father,—he also shall be given a share; and if one of the Sons dies his share shall be resumed. '*Sodarasya tu sodaraḥ*' ('the uterine Brother of the uterine Brother') should be taken as referring to cases where the partition has been made through the Mcthers, and as applying to the Son born after partition, in a case where the property has no property—(*Vishvarūpa*).

It has been said that when one of the Brothers has died Sonless and has left no Wife or Daughter or Parents,—his property goes to his Brothers. Further details are laid down here in connection with that general rule.—When one divided property has been reunited with another divided property, it is called '*samsṛṣṭa*', 'Reunion': and those who are parties to such *union* are called '*samsṛṣṭī*' 'Reunited'. When one such reunited person dies, his property shall be taken by a reunited Brother;—i.e. the *uterine* Brother, and not the *Step-brother*, even though the latter also be *reunited*. If a Son is born to the reunited Brother after his death, then the surviving reunited Brother shall give the share of that dead Brother to that Son.—This latter statement is made in the present context only casually.—The rule laid down in this text is stated *obviously* in the next text (*Yājñavalkya* 2.139)—(*Aparārka*).

(A) Here we have an exception to the general rule that when a man dies Sonless, his property goes to his Wife, Daughters, etc. etc. (*Yājñavalkya* 2.137). When the property once divided is again united, it is called '*samsṛṣṭa*', 'reunited property'; and the owner of such property is called '*samsṛṣṭī*', 'reunited coparcener'. The 'reunion' meant here is not one with any one at random; it is only that with the Father, Brother or Uncle, as declared by *Bṛhaspati* (Text No. 1059).—When such a 'reunited coparcener' dies, the surviving 'reunited coparcener' shall, at the time of the subsequent partition, make over the share of the deceased coparcener to the Son that may have been born to the deceased after his death, from a Wife in whom signs of pregnancy were not perceptible at the time of the Husband's death. In case no such Son is born to the deceased, the surviving 'reunited coparcener' shall himself take that share, which shall not go to the Wife or Daughter of the deceased.—To this rule (A) that—'the reunited coparcener shall take the share of the reunited coparcener', the text adds an exception—(B) '*Sodarasya* for *sodaraḥ*', '*the uterine Brother shall deal thus with the share of the uterine Brother*';—the words '*samsṛṣṭinaḥ*' ('of the reunited coparcener) and '*samsṛṣṭī*' ('the reunited coparcener') have to be construed with this second sentence also; so that the meaning of this second

What has been said above is in full accord with the following text of *Manu* (9.216):

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sentence is that—'when a *reunited uterine Brother* dies, his share shall be given to his posthumous Son, by the surviving *reunited uterine Brother*; and if there is no Son, the surviving *reunited uterine Brother* shall take the share of the dead *reunited uterine Brother*'.—Thus then, in a case where the 'reunion' has been among several Brothers,—some *uterine*, some Step-brothers,—it is the *uterine Brothers* who shall receive the share of the dead *reunited uterine Brother*,—not the *Step-brothers*, even though they were *reunited coparceners*. It is in this sense that the second sentence (B) is an exception to the first (A)—(*Mitākṣarā*).

[On this, the *Bālambhaṭṭī* has the following notes:—The explanation provided by the *Mitākṣarā* sets aside those given by the older writers. What is meant is as follows:—When there are three or more *Reunited Coparceners*,—if one of the Brothers dies after his Wife has conceived, and partition among the survivors is found necessary, and is carried out while the fact of the pregnancy is still uncertain or unknown,—if a Son happen to be born subsequently, his Father's share is to be given to this Son; if no such Son is born, the said share is to be divided among the surviving *Reunited Coparceners*.]

It has been declared that when a man dies without a Son, his property goes to his Wife and others. The present text lays down an exception to that rule.—(A) If a *Reunited Coparcener* dies, his share shall go to his surviving *Reunited Coparcener*, not to his Wife and others.—(B) If a Son—who was in his Mother's womb at the time of his Father's death—is born after the death of the *Reunited Coparcener*, the share of this deceased person shall be given to that Son—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

If a *Reunited Coparcener* dies, his property shall be taken by the other *Reunited Coparcener*,—and the uterine Brother shall take the property of the uterine Brother: —i.e. in a case where the *uterine Brother* and the *Step-brother* are both *Reunited Coparceners* of the deceased,—the property of the deceased shall go to the *uterine Brother*—(*Vivādaratnākara*, p. 604).

If a *Reunited Coparcener* dies, his surviving *Reunited Coparcener* shall give the dead man's share to his Son.—In a general way the fact being *reunited* is the ground for one coparcener taking the property of another—(*Vivādachandra* 25.1–6).—In a case where the Father has become *reunited* with one of his Sons, the Father's share, on his death, shall be taken by that *reunited* Son, not by those who had not been *reunited* with him, but had remained separate.—The *Smṛtisāra* also holds the same opinion—(*Vivādachandra* 29.1–3).

The property that has been divided and again combined is called '*saṃsṛṣṭa*', 'reunited property'; one who owns such property is the '*saṃsṛṣṭī*', 'reunited coparcener'.—If one of the Reunited Coparceners dies, without leaving a Son or Grandson,—even though his Wife may be alive,—his property goes to his surviving *Reunited Coparcener*. If there are several surviving *Reunited Coparceners*, they shall divide the property among themselves and support the Widow.—This 'reunion' is possible only with one's Father, Brother or Uncle; as declared by *Bṛhaspati* (Text No. 1059).—If, however, the Wife of the deceased coparcener should give birth to a posthumous Son, they shall give to that Son, the share of the deceased.—Further, the property of a Reunited Coparcener is not to be taken by any and every Reunited Coparcener; it goes only to that Reunited Coparcener who is the *uterine Brother* of the deceased—(*Madanapārijāta*, pp. 676-677).—The essence of the whole law on this subject is as follows:—(*a*) In a case where the Sonless deceased has no 'reunited' *Step-brothers*, his property shall be taken by that *uterine Brother* of his who may have been 'reunited' with him;—(*b*) If there is no *reunited uterine Brother*, the property goes to that *Step-brother* of his who may have been reunited with him; and in this case if the Step-brothers belong to the same or to different castes, the property shall be divided among them in the proportion of 4, 3, 2, 1;—(*c*) in a case where among the *Reunited Coparceners*, there are *uterine Brothers* as well as *Step-brother*, the former shall take the property;—(*d*) in a case where the *uterine Brothers* are not *reunited*, while the *Step-brothers* are *reunited*, both, the uterine as well as the Step-brothers, shall receive the property;—(*e*) if from among the uterine Brothers, some are *reunited*, and some *not reunited*, then only those will receive property who fulfill both the conditions of being *uterine* and *reunited*.—In all cases the Widow receives her maintenance.—The distinction made between Brothers born of the same Mother and those born of different Mothers has to be made also between Uncles who are the Father's *uterine Brothers* and those who are

[1066]—'If a Son is born after partition, he shall receive the property of the Father only; or if any others be *reunited* with him, he shall share it with them.'

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his *Step-brothers*;—such is the opinion of some people.—But that is not right; because the text speaks of the 'uterine *Brother*' taking the property of the 'uterine *Brother*'; and there is no reason for extending the connotation of the term 'Brother' —(*Madanapārijāta*, pp. 680-681).

What is meant is that the property of a 'reunited' Brother is to be taken by his 'reunited' Brother,—not by his Wife or others—(*Smṛtichandrikā*, p. 702).

If one of the *Reunited Coparceners* dies, his property shall be given by his surviving *Reunited Coparcener* to the posthumous Son born to the former from a Mother in whom signs of pregnancy had not been perceived at the time of partition: in case there is no such born, the surviving *Reunited Coparcener* shall himself take the property, which shall not go to the dead man's Wife or other relatives. His Wives and unmarried Daughters are to receive maintenance—(*Parāsharamādhava*, p. 361).

This text indicates the fact that the term '*bhrātṛ*' stands for the *uterine Brother* as well as for the *Step-brother*—(*Dāyabhāga*, p. 191).

If any one among the Reunited Coparceners dies without leaving a Son or Grandson, the property would appear to devolve upon his 'Wife, Daughter, etc. etc.' according to the general rule. It is to this rule that the present text provides an exception. The meaning is that the property of a *Reunited Coparcener* shall be taken by his *Reunited Coparcener*, not by his Wife or other relations.—The next sentence, '*sodarasya tu sodaraḥ*' sets up an exception to the rule stated in the first sentence; the terms '*saṁsṛṣṭinaḥ*' and '*saṁsṛṣṭī*' have to be construed with this second sentence also; so that what is meant is as follows:—(*a*) the *reunited uterine Brother* shall give the share of the dead Brother to the latter's Son;—(*b*) in case there is no Son or Grandson or Great-grandson of the deceased Brother, he shall take the property himself;—(*c*) in case among the *Reunited Coparceners*, some are *uterine Brothers* and some are *not uterine Brothers*, the property of the deceased shall go to the reunited *uterine* Brothers, not to the others—(*Vīramitrodaya*, p. 677).

This text shows that in some cases, even a *Step-brother's* rights may be equal to those of the *uterine Brother*; if the former is a *Reunited Coparcener*, while the latter is not so—(*Smṛtitattva* II, p. 192).

This is an exception to the general rule propounded by *Yājñavalkya* regarding the 'Wife, Daughters, etc.' succeeding to the property of the Sonless man. The meaning is as follows:—What entitles one to inherit the property of a Sonless man is the fact of his having been 'reunited' with him.—*Vijñaneshvara*, *Madana* and others have held the view that the present text refers to cases where the deceased has left no Son or Grandson or Great-grandson; and consequently on the death of one such person out of a number of *reunited coparceners*, his property shall be taken by his surviving *reunited coparcener*, even when his Wife and other relations are there.—But this is open to question. In fact, the present text has no reference to the dead man being *Sonless*; if the qualification 'Sonless' were regarded as understood, the result would be that, of two Sons, or of a Son and a Grandson,—one of whom is 'reunited' with the Father, and the other is not,—both would be entitled to the same share. Hence if 'Sonless' were understood here as a necessay qualification, this text could have no bearing upon a deceased *Reunited Coparcener* who dies leaving Sons. And all this would be contrary to popular usage. . . . . In fact, the first line of the text contains two propositions: (*a*) The property of one dying while *reunited* is taken by the surviving *Reunited Coparcener*;—(*b*) if there is a competition between two *Reunited Coparceners*,—one of whom is the *uterine Brother* and the other the *Step-brother*—then, the *reunited uterine Brother* takes the property in question.—The words '*sodarasya tu sodaraḥ*' (*b*) is an exception to the general rule '*saṁsṛṣṭinaḥ saṁsṛṣṭī*' (*a*); and the latter words are to be taken also along with the former two words '*sodarasya tu sodaraḥ*'.—The second line of the text is an independent sentence; it refers to a case where when a Reunited Coparcener has died, his Wife was pregnant,—which however was not perceptible at the time,—and therefore his property was divided among his surviving *Reunited Coparceners*;—in such a case, if a Son is subsequently born, the surviving *Reunited Coparcener* (such as the Uncle of the posthumous Son) should hand over to that Son the share of the deceased. But if no such Son is born, then the surviving *Reunited Coparcener* should take that share for himself.—Here the mere fact of *being the Son* determines the right to take the share of the deceased Father, and not

[This text has been quoted and commented upon already, see Text No.1006.]

The second half of this text has made it clear that it is the *Reunited* Son who is entitled to the Father's property; whence the only right deduction is that it is only in the absence of the same *Reunited* Son, that the *not-reunited* Son can be entitled to it. It is for this same reason that it has been declared that

[1067]—'The Son born before partition has no right over the property of the Father's share,—and the one born after partition has no right over his Brother's share'—(*Bṛhaspati* 25.18).*

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the fact of *being born after partition among the surviving Reunited Coparceners*. To suppose the latter to be the determining factor serves no useful purpose and is cumbrous and leads to the absurd contingency that if the Son were born to the *Reunited Coparcener* in a distant country, *before partition*,—and that fact was known to the *Reunited Coparceners*,—then, that Son would not be entitled to receive his Father's property. The right view therefore is that the Son born before partition, even though not *reunited* with the Father, should receive his Father's share from the *Reunited* Uncle—(*Vyavahāramayūkha*, pp. 147-148).

[After having offered the same explanation as the *Chintāmaṇi*]—It will not be right to argue that—'according to the rule *Paitāmahañcha pitryañcha*, etc., the property should go to *all the coparceners*'.—Because that right has been set aside by the previous partition.—The conclusion, therefore, is that the Father's share goes to the Sons born after the partition,—if there are no such Sons, then it goes to the Sons *reunited* with the Father;—if there are no such *reunited Sons*, it goes to the *reunited uterine Brothers*;—not to the *unreunited* Son.—This is what has been declared by *Manu* (Text No. 1006 above)—(*Vibhāgasāra*, 17-2-9).

What is meant is this:—When a member of a joint family dies, his coparcener should make over his property to his child; if there is no child, then the property goes to the coparcener himself. '*The uterine Brother will deal, etc. etc.*'; i.e. when the uterine Brother has died and has left no Son or Father or Mother—(*Dāyanirṇaya* 7.1–10).

* Some people take this text as only elucidating what has gone in the preceding text (*Yājña.* 2.138).—If there is a uterine Brother, the Step-brother can never receive the property, even though he be *reunited*; while the uterine Brother would receive it, even though he be *not-reunited*—(*Vishvarūpa*).

What has been asserted affirmatively in the preceding text (*Yājña.* 2.138) is affirmed negatively in the present text; the meaning of which is quite clear.—The second line is in answer to the question as to what shall be done in a case where the Step-brother is *reunited*, and the uterine Brother is *not-reunited.* The meaning is that, even though he be *not-reunited*, the uterine Brother shall take the property, not the Step-brother, even though he be *reunited*. 'Reunited' is meant to be a qualification of the Step-brother, which is implied by the particle '*apī*'. Hence the meaning comes to be this:—If there is a person fulfilling both the conditions of *being uterine* and *being reunited*, then he shall receive the property;—when, however, the condition of *being reunited* is fulfilled by the Step-brother, then it is the character of *being uterine* that should determine the right to the property, not that of *being reunited*—(*Aparārka*).

In a case where a Sonless Reunited Coparcener (reunited with a Step-brother—says the *Bālambhaṭṭī*) has died, and has left a Step-brother *reunited* with him and also a uterine Brother *not reunited* with him,—both these shall divide his property between themselves. The present text provides reasons for this conclusion: (1) the Step-brother who is *reunited* shall receive the property, but (2) the Step-brother who is *not-reunited* shall not receive the property (the reading being '*nānyodaryo dhanam harēt*'). By these affirmative and negative propositions, what is meant is that, (*a*) in the case of the Step-brother, it is the character of *being reunited* that entitles him to receive the property;—the term '*asamsṛṣṭī*', 'not-reunited' (which, in this explanation, has been construed with the first line as qualifying '*anyodaryaḥ*', 'non-uterine Brother') is to be construed with the second sentence also; which thus means that—(*b*) 'even a person who is *not-reunited* shall receive the property of one who may be *reunited* with someone else;—and as to who is such a person, the answer is that it is the '*sodaryaḥ*', the uterine Brother. What this sentence declares is that the character of *being the uterine Brother* is the reason for the property being taken

[This also has been quoted above as Text No. 1007 above, where see notes.]

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by the uterine Brother who is *not-reunited*.—The term '*asamsṛṣṭī*', which has been already taken with '*sodaryaḥ*' (the uterine Brother) is to be taken again also with the next sentence, which has qualifying '*anyamātṛjaḥ*' (one born of another Mother); and with an '*ēva*' added, this last sentence would mean that 'the Step-brother *alone* shall not take the property'. Thus through the force of the particles '*api*' and '*ēva*', the meaning comes to be that in a case where the uterine Brother is *not-reunited* and the Step-brother is *reunited*, the property is to divided between the two; because each of the two persons fulfill one of the two conditions of the title [the uterine Brother fulfilling the condition of being *uterine* and the Step-brother, that of being *reunited*].—This has been made clear in *Manu* (9.210–212)—(*Mitākṣarā*).

[The *Bālambhaṭṭī*, in setting forth the final conclusion, reproduces the remarks of *Madanapārijāta*, on the Text No. 1065.]

In a case when the uterine Brother and the Step-brother are both *reunited* with the deceased, the property of the deceased shall go to the former, not to the latter. The second line supplies the reason for this: when a Reunited Coparcener has died leaving no Son or Wife or Daughter, etc., his property shall be taken by his uterine Brother, even though he be not among the *reunited* coparceners of the deceased; and so long as even such a uterine Brother is there, the Step-brother shall not receive the property.—Even when both, the uterine Brother and the Step-brother, are *reunited*, the prior claim of the uterine Brother is to the comparative nearness of his relationship to the deceased.—The particle '*api cha*' is meant to include what *Vashiṣṭha* has said to the effect that—'so long as an undivided uterine Brother is there, the property shall not go to the Wife or other relations of the deceased'.—In these two texts of *Yājñavalkya*, the particle '*tṛ*' has been repeated three times,—the *first* precludes the Wife and others from the inheritance, the *second* precludes such *reunited coparceners* as the Uncle and the rest, and the *third* precludes the notion that the undivided Step-brother is *not* entitled to the property—(*Vīramitrodaya-Ṭikā* on *Yājñavalkya*).

What this text means is as follows:—even though *reunited*, the Step-brother does not receive the property if a uterine Brother is there, even though *not-reunited*; while among the uterine Brothers, he alone shall receive it who has been *reunited*, not any other,—notwithstanding his *uterine* character. . . . . When however there are no uterine Brothers at all, the property shall go to such Step-brothers as have been *reunited*, not to others—(*Medhātithi* on *Manu* 9.212).

This text lays down what is to be done in a case when one of the *Reunited Coparceners* has died, leaving one uterine Brother *not-reunited* with him, and a Step-brother *reunited* with him.—(1) The first sentence is '*nānyodaryo dhanam harēt asamsṛṣṭī*', 'the Step-brother shall not take the property if he has been not-reunited'; and this proposition asserts that the Step-brother can take the property only if he has been *reunited*.—(2) The term '*asamsṛṣṭī*', 'not-reunited', has to be construed also with what follows, so that the meaning of the second sentence would be that 'even one who is *not-reunited* may take the property'.—who is that person?—the answer is '*sodaryaḥ*', 'the uterine Brother'. This second sentence asserts that a person who is *not-reunited* may take the property if he fulfills the condition of being the *uterine Brother*.—So that both the persons,—the Step-brother fulfilling the condition of being *reunited*, and the uterine Brother, fulfilling the condition of *being uterine*,—fulfilling the conditions precedent to the taking of the property, both of them are entitled to receive it. The reading '*nānyodaryo dhanam harēt*' is not satisfactory; but it gives the same sense—(*Vivādaratnākara*, pp. 604-605).

In a case when the Step-brother is *reunited* and the uterine Brother is *not-reunited*, both of them shall share the property. The first sentence is '*anyodaryaḥ samsṛṣṭī san samsṛṣṭī dhanam harēt*', 'the Step-brother, if *reunited*, shall receive the property of the Reunited Coparcener';—the second sentence is '*nānyodaryaḥ asamsṛṣṭī dhanam harēt*', 'the Step-brother who is *not-reunited* shall not receive the property'; so that the idea is confirmed that what entitles the Step-brother to receive the property is the fact of his *being reunited*.—The term '*asamsṛṣṭī*', 'not-reunited', is to be construed both ways; so that we also get the statement that—'the uterine Brother, even though *not-reunited*, shall take the property'.—The clause '*nānyamātṛjaḥ*' represents the third sentence, which means that—'among *unreunited* Coparceners, other than the Father, it is the uterine Brother alone that can take the property, not any one born of different Mothers.—Some people read '*nānyodaryo dhanam harēt*': but the meaning remains the same—(*Vivādachandra* 25.2–6).

The following might be urged—'If such be the law, there in a case where a man has become separated from his *Sons*, and then *reunited* with

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(*a*) '*Anyodaryaḥ*', the Step-brother,—if *reunited*, shall take the property;—(*b*) the Step-brother, if *not-reunited*, shall not take the property.—The sentence beginning with '*anyodaryaḥ*' and ending with '*asaṃsṛṣṭī*' means that 'what makes the Step-brother entitled to receive the property is the fact of his *being reunited*. The term 'not-reunited' is to be construed both ways,—so that the next sentence we obtain is '*asaṃsṛṣṭī api chādadyāt sodaryaḥ*', which means that—'even though *not-reunited*, the uterine Brother shall take the property.' This means that what makes the *unreunited* uterine Brother entitled to receive the property is the fact of his being *uterine* . . . . . The meaning of the last clause—'*nānyamātṛjaḥ*' is that 'in a case when the uterine Brother is *not-reunited*, and the Step-brother is *reunited*, the uterine Brother shall receive share in the property by virtue of being the *uterine* Brother, and the Step-brother also shall receive a share by virtue of his being *reunited*—(*Madanapārijāta*, pp. 676-677).

The first line refers to cases where the deceased has left a uterine Brother—(*Smṛtichandrikā*, p. 703).—It goes on to set forth the explanations provided by the *Mitākṣarā* and the *Madanapārijāta* and then proceeds to continue it as follows:—The meaning that has been deduced with great ingenuity is not expressed by the words at all. The most reasonable way is to take the texts of *Manu* and *Yājñavalkya* in their ordinary sense and to reconcile them by taking them as pertaining to different topics; *Manu's* text being taken as pertaining to cases where there are *both* moveable and immoveable properties, and *Yājñavalkya's* text as pertaining to cases where there is moveable property *only*, or immoveable property *only*—(*Smṛtichandrikā*, pp. 705-706).

The Step-brother shall receive the property of his Step-brother if he has been *reunited* with him, not, if he has been *not-reunited*.—The uterine Brother may receive the property of his uterine Brother, even though he be *not-reunited*, and the property shall not be taken by the *reunited* Step-brother *only*—(*Parāsharamādhava*, p. 362).—Some people explain the second line as follows:—'In a case where there are *reunited* Step-brother and *unreunited* uterine Brothers, the property shall be taken by the *unreunited* uterine Brothers, not by the Step-brothers, even though *reunited*; *Manu's* text (9.211)—which lays down that the *Reunited* Step-brothers and the *unreunited* uterine Brothers are all entitled to share the property,—should be taken as applying to cases where there are *both* kinds of property, moveable and immoveable; and the text of *Yājñavalkya* (the present one) as applying to cases when there is *only* moveable property or *only* immoveable property.—People may accept which of the above explanations they think proper—(*Parāsharamādhava*, p. 363).

What is meant is that the Step-brother, if *reunited*, should be the first to receive the property,—not that he *alone* shall take it. The question arising as to whether while receiving it first, he shall preclude the uterine Brother, or he shall share the property with him,—the answer to this is given in the second line, the meaning being that 'the uterine Brother, even though *not-reunited*, shall receive the property, and it is the Step-brother who will get it, *only if reunited*'.—What is meant is that the property is to be shared between the *unreunited uterine Brother* and the *Reunited Step-brother*. It is with this view that the author has used the terms '*api-cha*'.—Some people have taken this text as amplifying what has gone in the preceding text.—But this is most improper. As in that case, what was intended to be said having been already said in the present text, the preceding text would be entirely superfluous. In reality, what the present text means is as follows:—(*a*) That Step-brother who is *reunited* is to take the property, even when there is a uterine Brother who is *not-reunited*; (*b*) the Step-brother shall not take it, if he is *not-reunited*'. Then the question arising regarding the rights of the uterine Brother, the answer is given in the second line:—'(*c*) Even though *not-reunited*, the uterine Brother shall receive the property, and the *reunited Step-brother* shall not take the *whole* of it; it shall be shared by both. This is exactly what has been declared by *Manu* (9.212)—(*Dāyabhāga*, pp. 193–203).

What is stated here is that, in a case where there is a *reunited Step-brother* and also a *uterine Brother*, the property shall be shared by both. The term '*asaṃsṛṣṭī*' is to be construed both ways; as also the term '*saṃsṛṣṭaḥ*' (what is read for '*sodaraḥ*') which latter term means '*uterine Brother*' in the first sentence, and '*reunited*' in the second sentence (qualifying '*anyamātṛjaḥ*'). An '*eva*' has to be understood after '*anyamātṛjaḥ*'.—The meaning thus comes to be as follows:—(*a*) 'The Step-brother

his *Brother*,—if he does not beget any other Sons, and dies, his property would go to the *reunited Brother*, not to his *Son* who had been separated and *not reunited*.'

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shall receive the property *if he has been reunited*; (*b*) the Step-brother shall *not* receive the property *if he has been not-reunited*; similarly, (*c*) the uterine Brother shall receive the property even when *not-reunited*, much more when *reunited*; and (*d*) even when *reunited* the Step-brother *alone* shall not receive the property, he shall share it with the uterine Brother, even when the latter is *not-reunited*'. The upshot thus is—(*a*) in a case where there is an *unreunited uterine Brother* and a *reunited Step-brother*, the property of this deceased Sonless Brother shall be shared equally by them;—(*b*) in case the *uterine Brother* also has been *reunited*, then he alone shall take the entire property.—The Masculine Gender in the terms '*samsṛṣṭī*' and the rest is not meant to be significant; that is why *Manu* has declared the 'uterine Sisters' also to be entitled to receive the property (9.210)—(*Vīramitrodaya*, p. 678).

The Step-brother shall receive the property only if he has been *reunited*; but the uterine Brother shall get it even if *not-reunited*.—In a case, between the uterine Brother and the Step-brother, where each one fulfills only one of the two conditions—of being *uterine* and being *reunited*,—the property shall be divided between them; but not so when the Step-brother is *not-reunited* (thus fulfills neither of the two conditions); this is what is meant by '*samsṛṣṭo nānyamātṛjaḥ*'; which means that when the *reunited* uterine Brother is there, the Step-brother shall not receive the property, even though he may be *reunited*; i.e. the *reunited uterine* Brother alone shall receive the property; as he would be fulfulling both the conditions which would make his claims stronger than those of the Step-brother who would be fulfilling only one condition. . . . . . . The view of *Shūlapāṇi Mahāmahopādhyāya*, as expressed in his *Dīpakalikā* commentary on *Yājñavalkya*, is as follows:—Even though *not-reunited*, the uterine Brother shall receive the property, not the Step-brother even though *reunited*.—The purpose served by this text is only to assert the claims of the *unreunited* uterine Brother—(*Smṛtitattva* II, pp. 194-195).

In a case when there is an *unreunited* uterine Brother and a *Reunited* Step-brother, the property is to be divided between them.—Here the terms '*anyodarya*' and '*anyamātṛjaḥ*' stand not for the *Step-brother* only, but also for the *Uncle* and others. If these latter were not meant, then there would be no point in including them under the category of 'Reunited Coparceners'.—The term '*asamsṛṣṭī-api*' is to be construed both ways; and the term '*samsṛṣṭaḥ*' (i.e. for '*sodaraḥ*') is to be repeated,—once in the sense of 'reunited' and then in the sense of 'uterine Brother'; in the former case, the particle '*api*' is to be understood after '*samsṛṣṭaḥ*', and at the end of the text, the particle '*eva*' is to be taken as understood.—Thus the following propositions are deduced from the text:—(A) A *non-uterine Coparcener*—i.e. Wife, Father, Grandfather, Step-brother, Uncle,—shall take the property, *if reunited*; thus what entitles the *non-uterine Coparcener* to the property is his *reunion*.—(B) The *uterine Coparcener* (uterine Brother) shall take the property, even though *not-reunited*; his title resting on his *uterine* character.—(C) The *non-uterine Coparcener alone* shall not take the property, even though he be *reunited*; the property is to be divided between the *uterine Brother* (unreunited) and the *non-uterine Coparcener* (reunited),—one being entitled through being *uterine* and other through being *reunited*. This is exactly what has been made clear by *Manu* 9.211-212—(*Vyavahāramayūkha*, pp. 148-149).

'*Anyamātṛjaḥ*'—a coparcener other than the uterine Brother—(*Vibhāgasāra* 18.1-6).

(*a*) In a case where the uterine Brother is *not-reunited* and the non-uterine Coparcener is *reunited*—who is to get the property? (*b*) In a case where there is a uterine Brother and a non-uterine Coparcener,—both *unreunited*—who is to get it?—These are the two questions answered in this text: (A) The meaning of the first half is as follows:—A non-uterine coparcener is to get it only if he had been *reunited* to the deceased; according to the previous text, the uterine Brother would succeed even when *not-reunited*; so that taking the two texts together it follows that in a case where there is an *unreunited uterine Brother* and a *reunited non-uterine Coparcener*, the property is to be divided between them; but if the *non-uterine* Coparcener also is not *reunited*, then he does not receive the property at all.—(B) The meaning of the second half of the text is that in a case where there is a *reunited uterine Brother*, the whole property shall go to him,—nothing to the *non-uterine Coparcener*, even though this latter also may have been *reunited*—(*Dāyanirṇaya* 7.2-3).—The Law on this subject may be thus summed up:—First of all

Yes; that would be so.

In regard to a case where the deceased has left a *reunited Step-brother*, and a *uterine Brother not-reunited*,—says *Yājñavalkya* (2.139)—

[1068]—'The *non-uterine coparcener*, shall take the property of a *non-uterine coparcener*, if *reunited*, not if *not-reunited*; as for the *uterine coparcener* he shall take the property, even though *not-reunited*; not so the coparcener born of another Mother.'—[Several digests, including the *Mitākṣarā*, read '*saṃsṛṣṭaḥ*' in place of '*sodaraḥ*', but explain it as meaning *sodaraḥ*, the uterine Brother; so the meaning of the text remains the same.]

The sentence is to be broken up and construed and interpreted as follows:—'The *non-uterine* Brother shall take the property of a non-uterine Brother, if he has been *reunited* with him, *not* if he has not been *not-reunited*; but the *uterine* Brother shall take the property, even though he may be *not-reunited*';—the reading '*nānyodaryo dhanam harēt*' (in place of '*nānyodarya-dhanam harēt*') makes the construction easier;—'*not so the Brother born of another Mother*' is only reiterative of what has gone before.—Thus then, what is meant is that the source of the right of the *non-uterine* Brother over the property in question lies in his *being reunited*, while that of the *uterine Brother* lies in his *being uterine*.

The meaning of the sentence cannot be that—'even though *reunited*, the non-uterine Brother cannot take the property of the non-uterine Brother'; firstly, because such a meaning would be repugnant to the construction, and secondly because the text, which is apparently based upon equity, would (if explained as suggested) have to be assumed as having its sole support in some supposed Vedic text.

Nārada (13.24)—

[1069]—(A) 'The share of Reunited Coparceners is held to belong to the Reunited Coparceners themselves; (B) in other cases, it goes to those entitled to inherit it; (C) in the case of those leaving no offspring, it will go to others.'

'*Tēṣāmēva*'—i.e. to the Reunited Coparceners themselves.—'*Atonyathā*', '*in other cases*'—i.e. where there are no Reunited Coparceners;—that share goes to '*tadaṃshabhājaḥ*' '*those entitled to inherit it*',—that the *Sons*.—'*Nirbījēṣu*'—in the case of the Reunited Coparceners dying without children, —'*it will go to others*'—i.e. to those *not-reunited*.—The first sentence does *not* mean that—'whatever was in the possession of each coparcener while they were *reunited* should, when so declared, be left with him, when the subsequent partition takes place';—because, in the presence of the principle that during *Reunion*, they are all *equal owners*, such an assertion as the one suggested could serve no practical purpose [*lit.* could serve only a transcendental purpose].*

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comes the *uterine Brother*;—if there is no uterine Brother, then the *non-uterine* come in;—as between the *Reunited* and the *Unreunited* uterine Brothers, the property goes to the former;—as between the *reunited* non-uterine Coparcener and the *unreunited* non-uterine Coparcener, it goes to the former;—as between the *reunited* non-uterine Coparcener and the *unreunited* uterine Brother, the property is to be equally divided;—as between the *Reunited* uterine Brother and the *Reunited* non-uterine Coparcener, the property goes to the former—(*Dāyanirṇaya* 8.1–8).

* '*Atonyathā*'—in the event of there being no Reunited Coparceners.—'*Nirbījēṣu*'—those leaving no issue.—'*Itarān*'—i.e. to those not entitled to inherit and those not *reunited*.—'*Iyāt*'—the share should go.—The *Pārijāta* has adopted the reading '*atonyathānaṃshabhājaḥ*'; but this is opposed to many authoritative books.

'*Atonyathā, etc.*'—when there are *Reunited* Coparceners, the *Unreunited* Coparceners, in the shape of the Step-brother, etc., shall not receive any share [reading

Shaṅkha [*Nārada* 13.25–27, in other digests]—

[1070]—'(A) If among (Reunited) Brothers, any one should die Sonless, or become a Renunciate, the others shall divide his property among themselves,—with the exception of the *Strīdhana*.—(B) They shall make provision for his Wives till their death, in case they remain faithful to their Husband's bed; those not doing so should be cut off from maintenance, and also from that.—(C) If the deceased has left a Daughter, her Father's share shall be set apart for her maintenance; she shall retain that share till her marriage; after marriage, her Husband shall maintain her.'

'*Others*'—i.e. his Reunited Coparceners.—'*Those not doing so*'—i.e. those not remaining faithful to the Husband's bed, i.e. becoming unchaste.—'*From that*'—i.e. from the *Strīdhana*; the meaning thus is that in the case of unchaste Widows, it is not only their maintenance that will be cut off, their *Strīdhana* also shall be taken away from them.—The 'Daughter' meant here is one who is *not married*; hence the meaning—it is necessary to maintain her and do everything for ending with her marriage.*

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adopted '*nāmshabhājaḥ*'].—In cases where all the Reunited Coparceners are children, the property shall go to others,—i.e. to such *unreunited* Coparceners as the Step-brother and others—(*Smṛtichandrikā*, pp. 706-707).

'*Nirbījēṣu*'—without children.—'*Itarān iyāt*'—it should go to persons other than those mentioned.—The re-partition among Reunited Coparceners is to be done by means of the 'throwing of the dice'—(*Vibhāgasāra*, 18.1–7).

Tēṣāmēva—of the *Reunited* Coparceners only;—'*atonyathā*'—in the absence of Reunited Coparceners;—'*amshabhājaḥ*',—the Son and others.—The meaning is that if the Reunited Member has no issue, his share shall go to others—(*Dāyanirṇaya* 22.2-1).

* This refers to cases of 'Reunion'—(*Smṛtichandrikā*, p. 681).—(B) and (C) lay down what is to be done for the Wives and Daughters of the Reunited Coparcener. The other Reunited Coparceners shall perform the Daughter's marriage and maintain her till then—(*Smṛtichandrikā*, p. 702).

(A) lays down the right of the Brothers taking the property of a dead Brother, even in the presence of his Widows. But this refers to the case of *Reunited* Brothers; hence there is nothing in this that could be regarded as contrary to what has been declared by *Yājñavalkya* regarding the Wife's prior claim to the property of her childless Husband—(*Parāsharamādhava*, pp. 353–356).

(B) The 'Wives' meant here are those who are chaste, but are not keeping the vows of the Widow. According to the *Pārijāta* however, the 'Wives' meant here are those belonging to the same caste as the Husband.—'*Itarāsu*'—i.e. those not faithful to the Husband's bed.—'*Āsamskārāt*';—i.e. she shall receive as much of the property as may be required for all the sacramental rites ending with marriage, says the *Kalpataru*—(*Vivādaratnākara*, p. 603).

On the death of a Reunited Coparcener, such of his Widows as are chaste shall receive maintenance.—'*Itarāsu*'—those that are unchaste.—'*Āchchhindyāt*'— cut off.—'*Daughter*'—unmarried.—'*Āsamskārāt*'—till marriage—they shall maintain her; after marriage, her Husband shall maintain her—(*Vivādachandra* 25.2–10).

'*Āsamskārāt*'—everything, including marriage—(*Vīramitrodaya*, p. 688). This text asserts that even when the Widow is there, the property goes to the Brothers of the deceased—the Widow receiving only maintenance—(*Vīramitrodaya*, p. 632; also *Mitākṣarā*, p. 729).

This refers to Reunited Coparceners—(*Vyavahāramayūkha*, p. 151).—This refers to a case where the deceased was either *undivided* or *reunited*—(*Vyavahāramayūkha*, p. 139).

This refers to such women as have been married, but *not* in strict accordance with Law—(*Dāyabhāga*, p. 168).

Among Reunited Brothers, if one becomes a Renunciate or dies, then the other Reunited Brothers shall take his property; his Wife, if chaste, shall be supported; those of his Wives that are not chaste shall not be supported; his unmarried Daughter shall be maintained till she is married—(*Vibhāgasāra* 18.1–11).

Kātyāyana—

[1071]—'(*a*) Among *Reunited Coparceners*, on the death of one, the other *Reunited Coparceners* shall take his property; and (*b*) among *Separated Coparceners*, on the death of one, the other *Separated Coparceners* shall take his property;—those receiving the property in either case being such as are entitled to inherit the property of any one among themselves who may die childless.'

It has been declared here that, 'on the death of one the other takes his property'; to this a qualifying clause has been added—'*the persons taking the property must be such as are entitled to inherit the property of any one among themselves who may die childless*'; that is they should be persons entitled to receive the share of anyone else who may die without issue.

The upshot of the Law on this subject is as follows:—(*a*) If a *Reunited Coparcener* dies,—leaving either a Son born after the previous partition, or a Grandson, or a Great-grandson,—these latter shall receive his share in the property;—(*b*) in case there is no Son or Grandson or Great-grandson, the property goes to such a widow of his as may be fully equipped with all the qualities of chastity and entirely free from all eight forms of 'intercourse'; the other Widows, if chaste, shall be entitled to maintenance, not to a share in the property;—(*c*) as for the Daughter of the deceased, she shall be maintained and all her sacraments ending with marriage shall be performed with the property left by the deceased;—(*d*) the Father of the deceased shall be maintained like the chaste Widow;—(*e*) in the absence of all these, the entire property of the deceased shall go to the other Reunited Coparceners; (*f*) if among the Reunited Coparceners there are *uterine* and *non-uterine* members the property goes to the Reunited uterine (Brother);—(*g*) if the only *Reunited* Coparcener is a *non-uterine* member, and there is a uterine Brother (who is *not-reunited*),—then both of these share the property equally;—(*h*) if of these two (uterine and non-uterine) only one is there, then that one receives the property;—(*i*) among *Reunited Coparceners*, if any one has acquired special property through Learning and other means, *after the Reunion*,—it shall be shared by all; though, normally, such property is impartible; but the acquirer shall receive *two shares*, the other *Reunited Coparceners* receiving one share each.*

In the *Prakāsha*, we have the following text:—

[1072] 'In the case of immoveable property, and in the case of property in the shape of *bipeds* (slaves),—even though the property be self-acquired, there can be no giving or selling without the consent of all the Sons.'†

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*'*Nirbīja, etc.*'—i.e. they are so related to each other that if any one dies childless, the other will take his property—(*Vibhāgasāra* 18.2-3).

† In regard to *immoveable property*,—ancestral as well as self-acquired—one is subservient to the Son and others and the Father's ownership is not absolute—(*Mitākṣarā*, p. 611 and *Vīramitrodaya*, p. 532).

What is forbidden is the *giving* and *selling*—(*Dāyabhāga*, p. 35),—not enjoyment (*Vyavahāramayūkha*, p. 91).

This text refers either to the property of Reunited Coparceners or to Joint Property *in general*; as it is only in regard to these that the Father is not free to do what he likes.—All that is meant is that such *giving* or *selling* is *not commended*—(*Vibhāgasāra* 19.1–10).

In a case where the ancestral property had been lost and has been recovered by the Father by drawing upon the Joint Property,—the Father cannot dispose of that property without the consent of his Sons. '*Arjitam*' here means *recovered* by himself—(*Dāyanirṇaya* 18.2-1).

[1073] 'Those that are born, those that are unborn, those that are in the womb,—all these require a *living*, not the right to give or sell.'

The following is an exception to the above—

[1074] 'Even a single Coparcener can give away or mortgage or sell immoveable property, in times of distress, for the sake of the family; specially for a pious purpose.'

That is to say, even a divided member of the family may give away or sell even immoveable property, in times of distress involving the whole family,—or for such pious purposes as the marriage of girls and so forth.*

Manu (*Vyāsa* in other digests)—

[1075] 'Divided or undivided, all Coparceners are equal, in regard to immoveable property; and no one person among them has the right to give, mortgage or sell it.'

What is meant by this is that when certain Coparceners have become separated, and in regard to any property if it is doubtful whether or not it has been divided, it is advisable, for the removal of this doubt, to secure the consent of the separated Coparcener also.†

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* While the Sons or Grandsons or Brothers—forming members of a joint family—are minors, and as such, not in a position to accord their consent to any transactions,—if some calamity happen to overtake the whole family,—or if it becomes necessary for the purpose of supporting the family, or for the purpose of performing certain obligatory *Shrāddhas* and other rites,—even a single Coparcener,—who is qualified to do it,—may give away or mortgage or sell immoveable property—(*Mitākṣarā*, p. 611).

Even though the man has been separated from his Coparceners,—and the property is an immoveable one,—if there is a calamity upon all Coparceners,—or a Daughter of one of the Coparceners has to be married,—then for meeting these cases, even the divided Coparcener may give away or sell the immoveable property—(*Vibhāgasāra* 18.2–8).

† '*Ādhamana*' is *mortgaging*. This refers to cases where the Coparceners have found it difficult to make an exactly equal division of the immoveable property and have therefore agreed to divide its produce year after year—(*Smṛtichandrikā*, p. 716).

The text should not be taken to mean that any individual Coparcener has no right to sell or mortgage or give away the property mentioned. Because the 'ownership'—which consists in being entitled to disposal—is there, as in the case of all other property. What the text means is that—'if a Coparcener, on the strength of his ownership, were to sell, or mortgage or give away the property to an undesirable person, he would injure the whole family and thereby incur sin'; it does not mean that the transaction itself would be invalid—(*Dāyabhāga*, p. 34).

The case contemplated here is one in which the ownership of each Coparcener extends over the entire property, it is for this reason that the giving, etc. of it by any one without the consent of others has been forbidden;—when it is done for the individual's personal benefit—(*Smṛtitattva* II, p. 164).—In cases where the Coparceners have been separated, but their individual shares in the property have not been specifically allocated, the property remains, to that extent, *joint*; and it follows from this that no single Coparcener has the right to sell or mortgage or give it away. When the property has been definitely partitioned and the shares specifically allocated, the said transactions would be perfectly valid in regard to those shares. In reality, however, even in the case of separated Coparceners, the obtaining of the consent of others would serve the purpose of stopping any disputes that might otherwise arise in regard to the property;—this consent, in this case, standing on the same footing is the consent of neighbours and kinsmen—(*Smṛtitattva* II, p. 175).

[After quoting the opinion of the *Smṛtitattva*]—This same appears to be the view of the *Mitākṣarā* also, which has defined '*vibhāga*', 'Partition', as 'the allocation

There is the following declaration—

[1076] 'Land passes (from one person to another) under six conditions: (1) the consent of the *village*, (2) the consent of *paternal relations*, (3) the consent of *neighbours*, (4) the consent of *Coparceners*, (5) the giving of gold, and (6) the giving of water.'

Here, the consent of the *village*, the *Coparceners* and the *paternal relations* has been mentioned with a view to the making of the *gift* (transfer) public;—the consent of the *neighbours* is for the purpose of precluding disputes regarding the boundary;—and the *giving of gold and water* has been laid down in view of the following text—

[1077] 'There should be no selling of immoveable property; it may be mortgaged with consent';—

where there is prohibition (of selling land); and yet in the following text—

[1078] 'He who accepts the gift of land, and he who makes that gift,—both incur merit by the act, and are sure to go to Heaven',—

the *giving of land* has been highly commended.—Hence the conclusion is that, even when *selling* (land), one should make gifts of *gold and water*; so that the *selling* also becomes an act of *gift*.—This is what is meant by the Text No. 1076 above (where the giving of *gold and water* are laid down).*

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of the ownership of an individual Coparcener over one part of the property which consists of several parts over which extends the ownership of several persons'. The question for consideration is—Does the ownership of the owners over a number of articles constituting 'Property' extend over each particular article severally or over all of them collectively? We hold that it extends over every one of the articles *severally*—(*Vīramitrodaya*, pp. 549-550).—Though it is well known that no single Coparcener has the right, with the consent of others, to sell or mortgage or give away any part of the joint property of any kind,—yet it has been reiterated here with special reference to immoveable property, with a view to indicating its special importance.—In the case of *undivided* Coparceners, it is just possible that after the lapse of some time, doubts might arise as to their having been separated or joint before a disputed transaction; and for the settling of this point, *partition* would have to be proved by witnesses and other means. If, therefore, the consent of the Coparceners has been obtained, the transaction becomes validated for all time—(*Vīramitrodaya*, p. 585).

The text prohibits the *selling*, etc. by non-separated members of a joint family —(*Dāyanirṇaya* 16.2–5).

* The consent of the 'village' has been held to be essential in view of the injunction that 'the acceptance of gifts should be done openly, specially in the case of immoveable property'; and it is meant for the purpose of making the transaction widely known (and irrevocable); it is not meant that without such consent, the gift is invalid.—The consent of 'neighbours' is required for the purpose of removing all disputes regarding boundaries.—The necessity of the consent of 'relatives' has been already emphasised.—'*By giving gold and water*'.—The *selling* of immoveable property having been deprecated, and its *giving away* having been commended, whenever such property is *sold*, the *selling* should be in the manner of a *gift*, and as such it should be accompanied with the gift of *gold and water*—(*Mitākṣarā*, p. 612).

After the property has been partitioned, the consent of the Coparceners to any gift that may be made is required only for the purpose of setting aside all doubts regarding the boundaries of divided and undivided property; and it is necessary in the same manner as the consent of the village, neighbours and the rest.—'*Dāyāda*' here stands for the *Daughter's Sons*, etc., the paternal relations—'*Jñāti*'—having been mentioned separately.—'*Gold and water*'—even when land is *sold*, the selling should, in the manner of *gifts*, be accompanied with the giving of gold and water; —says *Vijñānēshvara*—(*Smṛtitattva* II, pp. 166-167).

Section (P)—Proofs of Partition

On this subject, says *Nārada* (13.36–40)—

[1079] 'When the subject of partition is in doubt, the settlement of the dispute among Coparceners shall be founded on the testimony of kinsmen, the deed of partition and the separate transaction of business.*

[1080] 'Among undivided Brothers, there is a single (common) performance of religious duties; after division, each has to perform his duties separately.'†

[1081] 'Giving and receiving Cattle, Food, Houses, Fields and acceptance (of mortgages),—as also Religious Acts with Cooked Food, Income and Expenditure,—should be understood to be separate among divided (Brothers).—

[1082] 'The acts of giving of evidence, standing surety, giving and receiving gifts,—may be done among themselves, by *divided* Brothers, not by *undivided* ones.'

[1083] 'Those Coparceners among whom these transactions are carried on should be regarded as *divided*,—even in the absence of a written document.'‡

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* '*Sandēha*'—dispute.—'*Dāyadānām*'—among Coparceners—in regard to '*vibhāga*', Partition itself,—one party saying that 'there has been no partition between us',—also in regard to the '*dharma*', character—of the Partition—the disputant saying 'all of our party has not been partitioned';—the decision in such matters shall be arrived at either '*jñātibhiḥ*'—through witnesses in the shape of kinsmen,—or through *the deed of partition*,—or by means of reasonings based upon such indication of facts as the separate business-transactions and so forth—(*Vyavahāramayūkha*, p. 132).

The special mention of 'Kinsmen' shows that so long as Kinsmen are available as witnesses, other witnesses shall not be admitted.—'*Kārya*'—Agriculture, etc.—the separate carrying on of these—(*Vīramitrodaya*, p. 176).

† '*Dharma*'—*Vaishvadeva* and other offerings—(*Smṛtichandrikā*, p. 718; also *Vivādaratnākara*, p. 607).

Separate Agriculture and other operations and separate performance of the Five Great Sacrifices, etc. have been declared here to be indicative of separation—(*Mitākṣarā*, p. 872).

Here the term '*bhrātṛṇām*' (Brothers) stands not for *Brothers only*, but for 'members of a joint family' in general. Hence the rule applies to all undivided members of a joint family, such as Father, Grandfather, Son, Grandson, Paternal Uncle, Nephew and so forth—(*Vyavahāramayūkha*, p. 132).

Every act—temporal or spiritual—is done with the help of property that has not been partitioned; hence the reward of the act accrues to all Coparceners—(*Vīramitrodaya*, p. 549; and *Smṛtitattva* II, p. 164).

‡ '*Grahaṇam*'—acceptance of gifts.—The meaning is that the fact of partition is proved by the existence of these transactions.—'*Pravartantē*'—are carried on—(*Smṛtichandrikā*, p. 718).

These are proofs indicative of Partition—(*Aparārka*, p. 756; and *Mitākṣarā*, p. 872).

'*Āgama*'—income of wealth.—'*Vyaya*'—expenditure of wealth.—Such income and expenditure are meant here as cannot be accounted for otherwise than on the basis of Partition—(*Vivādaratnākara*, p. 607).

If one Brother makes a gift and another accepts it;—or if their houses and income and expenditure are separately kept;—or when a loan is advanced by one, the other acts as witness or surety,—or when loan-transactions are carried on between themselves,—or if one of the Brothers, having bought an article for trading purposes, sells it to the other,—any one of these transactions can be carried on only among *divided* persons; hence on the strength of these the Partition becomes proved.

'*Vibhāgadharma*'—*Dharma*—subject—in the shape of *Vibhāga*—Partition.—'*Kinsmen*'—those who actually saw the partition being made.—'*Bhāgalekhya*' is the *Akṣapatra*, the Deed of Partition.—'*Pṛthak-Kārya*'—separate business—transactions, relating to income and expenditure, which is a condition invariably concomitant with division.—'*Dharma*'—such religious duties as the *Vaishvadeva-offering*.—'*Dānagrahaṇam*', giving and receiving of gifts, independently of one another.—'*Pashu*'—buying and selling, etc. of *cattle*.—'*Anna*'—producing of food-grains separately.—'*Gṛha*'—separate household.—'*Kṣetra*'—separate *fields*.—'*Parigraha*'—acceptance of mortgage, etc.—'*Pākadharma*'—religious rites performed with cooked food, e.g. the *Pārvaṇa-Shrāddha*.—'*Āgama*'—income, acquisition of wealth.—'*Vyaya*'—expenditure of wealth.—So also when one acts as a *witness* to the debt-transactions of the other,—or stands surety for him,—or if one receives gifts made by the other,—then these two persons should be regarded as '*divided*'.

Yājñavalkya (2.150)—

[1083] 'If there is a doubt regarding Partition, the fact of the partition should be regarded as proved by kinsmen, witnesses and documents, as also by separate households and lands.'

[The other reading for '*Vibhāgasya tu sandehē*' being '*Vibhāganihnavē bandhu*—'.

'*Yautakaiḥ*'—separate; the word being derived from the root '*yu*' which connotes *non-mixing*; hence the meaning is that the fact of the Partition should be deduced from the persons having *separate* houses and lands; that is to say, separate houses and lands, which cannot be otherwise accounted for, lend to the presumption that there has been partition.*

—It is not meant that *all* these conditions should be present before Partition can be regarded as proved—(*Dāyabhāga*, pp. 231-232).

'*Dāna*' and '*grahaṇa*' stand for the *giving* and *receiving* of loans. These same are reiterated in the second text—(*Vyavahāramayūkha*, p. 135).

The prohibition of mutual *giving*, etc. among *undivided* Coparceners is quite equitable; even before the gift is made, the ownership of the recipient would, in this case, be already there; so that there could be no 'giving' or 'receiving' at all.—Similarly with giving evidence and standing surety (the interests of the Coparceners being identical)—(*Smṛtitattva* II, p. 164).

* '*Yautakaiḥ*'—separate—(*Vivādaratnākara*, p. 607).

This text explains what should be done if any one of the Coparceners denies the partition.—If the partition is denied, it should be proved by the testimony of *kinsmen*—i.e. the Maternal Uncle and other relatives,—or by '*witnesses*', or '*documents*' that might have been executed setting forth the details of the partition. Says *Bṛhaspati*—'When Brothers are divided, they should execute a document proclaiming the division and they should also have unimpeachable witnesses to the transaction'.—'*Gṛhakṣetra—yautaka*' are separate houses, separate lands and separate *marriage-portions*—(*Vishvarūpa*).

When there is a dispute as to whether or not division has taken place, it is to be proved by means of *Kinsmen* and others; also by '*yautaka*'—separate—houses, lands, etc. '*Houses and lands*' stand for all those evidences of separation that have been described by *Nārada* (Texts 1079 *et seq.*) . . . . If Brothers and other Coparceners do all this publicly, they may be presumed to be *separate* in business—(*Aparārka*).

The fact of the Partition may be ascertained through *Jñātis* [explained by the *Bālambhaṭṭī* as *neutral persons belonging to the same caste as the parties concerned*], through *witnesses* and through *documents*,—i.e. the deed of partition; as also through houses and lands being *separate* (*yautaka*)—(*Mitākṣarā*).

The fact of the Partition is to be ascertained by the Judge and others, through *Jñātis*—paternal kinsmen,—*witnesses*—such as have been prescribed,—who would bring testimony to the fact of partition,—and *documents*—deed of partition;—'*houses and lands*', which are '*yautaka*', i.e. belonging to each Coparcener as exclusively as their *marriage-portions*—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

Again (*Yājñavalkya* 2.52)—

[1084] 'Among Brothers, between Husband and Wife, and between Father and Son,—no surety-ship, or loan-transaction, or bearing witnesses can be permitted, so long as they are not separated.'

That is to say, before partition, there can be no transaction of surety-ship and the rest between the sets of persons mentioned.

The following *objection* may be raised—'As between Husband and Wife, there can be no partition,—on account of the declaration of *Āpastamba*, that—

[1085] "There can be no partition between Husband and Wife".

The *answer* to this is as follows:—Such Vedic texts as—

[1086] 'The Husband and Wife should instal the Fire'—point out that the performance of such specified acts, the Husband and Wife are entitled *jointly*.—Similarly, in accordance with the following texts—

[1087] 'One initiates the Sacrificer with the Belt and his Wife with the Rope';—

[1088] 'The Sacrificer's Wife looks into the Butter';—

[1089] 'The Sacrificer ties up the Kusha-bundle';—and so forth—

there are a number of *Shrauta* acts—to be performed with the help of the duly Consecrated Fire (which is installed jointly by the Husband and Wife),—and also according to the text that—

[1090] 'The *Smārta* rites are to be performed in the Matrimonial Fire', etc. etc.—

there are certain *Smārta* acts, like the *Āvasathya* and other Home-offerings which are performed with the help of the Matrimonial Fire which is kindled by the Husband and Wife conjointly;—and to the performance of both these sets of acts, the Husband and Wife are entitled jointly.—Similarly to the enjoyment of the reward following from the performance of these acts, they are jointly entitled; as is clearly indicated by such texts as—

[1091] 'In Heaven the two attain imperishable effulgence',—

By these the fact of partition should be regarded as proved,—also by 'separate houses and lands'—(*Parāsharamādhava*, p. 386).

The most important witnessos are the *Jñātis*—i.e. the *Sapiṇḍas*; in the absence of these, other *witnesses* who are impartial. All these are not meant to be of equal importance; if they had been so meant then the single term 'witness' would have been sufficient—(*Dāyabhāga*, p. 229).

'*Jñāti*'—Father's relatives; *witnesses*—who are impartial. As compared with ordinary witnesses, the relations would be more intimate with the parties and as such more likely to know of the separate performance of *Shrāddhas* and such other circumstances indicative of partition.—'*Lekhyēna*'—by the deed of partition. By all these means, the fact of partition may be ascertained;—also '*yautakaiḥ gṛhakṣetraiḥ*'—by separate houses and lands—(*Vīramitrodaya*, p. 715).

If, after the lapse of some time, some one denies the partition, the fact can be got at through *Jñātis*—paternal relatives—,*witnesses*, of the prescribed qualifications, —and *documents*—i.e. the deed of partition;—as also through *separated houses and lands*. That is, it is to be ascertained by the fact of the parties carrying on their agricultural and other operations separately, and also performing this five great sacrifices and other religious acts separately—(*Madanapārijāta*, p. 689).

Here *Yājñavalkya* describes the means of proving the partition in the event of some one denying it.—'*Yautakaiḥ*'—separate;—qualifies '*gṛhakṣetraiḥ*', houses and lands—(*Vyavahāramayūkha*, p. 132).

which appear in the same context.—But such is not the case with such acts as Charity and Public Benefactions, which do not need the help of the said *Fires*.—Hence there is not the least possibility of *Āpastamba's* text meaning that 'there can be no partition of wealth between Husband and Wife'; specially as that text of *Āpastamba* occurs in the section dealing with the subject of the 'Wife looking into the clarified butter'; and also because the said is followed by the assertion that—'by reason of their Marriage there is a companionship between the Husband and Wife in regard to religious acts and also to the rewards of spiritual merits.'

Says the objector—'If that be so, then, as under the *Adhikaraṇa* on the Wife (*Mīmāmsā Sūtra* . . . . .), it has been asserted that "there is Wife's ownership also over the Husband's property",—it follows that there would have been partition between them if there were no scriptural prohibition of it (in the shape of *Āpāstamba's* text)'.

Not so; because, please understand that, the Wife can have no property at all; as declared by *Manu* (8.416) that—

[1092] 'The Wife, the Slave and the Son have no property of their own.'—

As regards the *Mīmāmsā-Adhikaraṇa* quoted, all that that does is to establish the joint liability of the Husband and Wife towards the performance of sacrifices; and it does not set aside the declaration that 'the Wife can have no property'. Because the said *Adhikaraṇa* represents a conclusion arrived at through *reasoning* and hence it cannot set aside an authoritative verbal declaration.

Finally, as regards the fact that there is partition between Husband and Wife, it is proved by the declaration that—

[1093] 'Wives should be made *equal sharers*' (see Text No. 880 above).—

So says the *Ratnākara*.*

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* Among Brothers and the rest,—so long as they have not separated—there can be no such transactions as Loans, standing Surety, or bearing witness, for each other. It is in accordance with this that it may be determined whether or not the parties are separated.—The mention of the 'Husband and Wife', between whom no separation is possible, serves the purpose of emphasising the fact that among other Coparceners also,—so long as they have not separated,—there can be no such transactions—(*Vishvarūpa*).

Among Brothers, etc.,—so long as their property has not been divided,—suretyship and other transactions among themselves is forbidden.—'*Dampatī*'—Husband and Wife.—'*Prātibhāvya*'—Suretyship; under which the person who guarantees the presence or trustworthiness or payment on behalf of another person is called the 'Surety'.—The epithet '*avibhaktē*', 'so long as they are not divided', applies to 'Brothers' and to 'Father and Son',—not to the 'Husband and Wife'; as there can be no 'division' of property between these two,—the Wife being the owner of her Husband's property simply by virtue of being his *Wife*; hence the property that is common between Husband and Wife cannot be divided—(*Aparārka*).

'*Prātibhāvyam*'—Suretyship.—Among Brothers, between Husband and Wife, and between Father and Son,—so long as their property has not been divided,—i.e. prior to partition,—suretyship, bearing witnesses, and loan-transactions have been forbidden by *Manu* and others; and the reason for this lies in the fact that their assets are common; and in the case of suretyship and bearing witness, there is a chance, under certain contingencies of their ending in the Surety or the Witness having to pay the amount in dispute.—This prohibition, however, is only in regard to such transactions being entered into without mutual consent; *with* mutual consent, suretyship and other transactions do take place between *undivided* members of the family also; *after* partition of course it takes place even without mutual consent.—An objection is raised here—'As between *Husband and Wife*, it is not right to speak of "division" (separation); as no *separation* is possible between them. That there can be no division of property between Husband and Wife has been shown by *Āpastamba* who says—"There can be no division between Husband and Wife"'.—The answer to this is as follows:—The *absence of division*

Bṛhaspati—

[1094] 'Those who keep their income, expenditure, wealth, separate and engage in mutual transactions of money-lending and trade—are *divided* among themselves.'

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spoken of by *Āpastamba* is only with reference to such acts and then results *as are performed with the help of the Shrauta and Smārta Fires*,—not to *all* acts, nor to *property*. That such is the meaning of *Āpastamba's* text is clear from the fact that, after having said that 'there can be no division between Husband and Wife', he goes to give the reason—'because of the marriage-rite there is companionship between them in regard to acts and the consequent merit and rewards resulting therefrom'. The meaning of this is that—'because companionship in regard to acts, from the time of marriage onwards, is found to be asserted in the *Shruti*—in such texts as *the Husband and Wife should instal the Fire*,—therefore from their *joint* liability towards the Installing of Fire, it follows that their liability towards all those acts *that are performed with the help of that Fire* is also joint;—similarly by virtue of such *Smṛti-texts* as—*All Smārta rites are to be performed in the Matrimonial Fire*—their liability towards *all acts performed with the help of the Matrimonial Fire* also must be regarded as joint'.—From this it follows that in regard to acts *other than* these performed with the said *Shrauta* and *Smārta* Fires,—e.g. such acts as works of public philanthropy—the liability of the Husband and the Wife is distinct.—Then again, in regard to the reward of spiritual merit also,—such as Heaven and the like,—we find it declared that the claims of the Husband and Wife are joint,—in such texts as '*Divi jyoti, etc.*'. From this also it follows that in regard to their actions in the performance of which their liability is joint, their claims to their rewards also must be joint. But that cannot be so in regard to the claims of the Wife to the reward of such acts of philanthropy as she may have done with the Husband's permission.—'But'—says the objector—'we find the joint character of their property also asserted in the subsequent texts of *Āpastamba*;—such as "so also in regard to the ownership of property—if during the Husband's absence the Wife makes gifts, she is not to be regarded as a thief".'—True; but all that these texts show is the Wife's ownership over the property,—and not that there can be no partition between her and her Husband. Because the meaning of the texts is that—'The Wife has ownership over the property—why?—because, if during her Husband's absence she makes necessary gifts, feeds guests and so forth, she is not regarded as a thief; and because it is so, therefore the Wife also has ownership over the property; as otherwise her said acts would involve misappropriation and theft'.—From all this it follows that there *can* be separation of the Wife's property also: but only with the Husband's consent, not merely by her wish. This has been asserted by *Yājñavalkya* himself (under Text No. 880 above)—(*Mitākṣarā*).

This text mentions the persons to whom loans should not be advanced; and in that connection forbids other things also.—'*Avibhakti*'—when there has been no division;—among Brothers, between Husband and Wife, and between Father and Son,—suretyship, loans, bearing witness in matters of dispute,—all this is *not permitted*—by the *Smṛtis*. The particle '*atha*' is meant to include 'Uncle and Nephew' and such others; and the particle '*cha*' is meant to include *Reunited Coparceners*; and the particle '*ēva*' means that the suretyship, etc. are never valid; the particle simply serves to fill up the metre; the particle '*tu*' serves to exclude cases where there is consent, and also where the property involved belongs exclusively to one of the members concerned, and is not *joint*. Hence in cases where the other member has accorded his consent, the Son can be the surety or witness for the Father and so forth. Similarly, even though the Husband and Wife may not have been separated, yet loan-transactions would be permissible on the basis of such property as forms part of the Wife's *Dowry*, for instance—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*).

It follows that the person advancing the loan must have been separated from the person receiving it—(*Smṛtichandrikā*, p. 718).

The term 'mutually' has to be added.—Though *Āpastamba* has asserted that 'there can be no division between Husband and Wife', yet, in view of the declaration of *Yājñavalkya* himself, to the effect that—'If a man is dividing his property equally, he should make his Wives equal sharers'—it is clear that *Yājñavalkya* has permitted the division between Husband and Wife, under certain circumstances; and it is in

That is, those who carry on, among themselves, transactions of buying, selling, etc., should be regarded as 'divided' among themselves.*

The method of 'Division' (Separation) is thus described by *Nārada* (13.42)—

[1095] 'If there are several descendants of one man (who are *divided*), they are separate in the matter of the performance of religious duties and of

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this sense that we have to take the term 'Husband and Wife' in the present context; so that there may be no inconsistency—(*Vivādaratnākara*, pp. 607-608).

'*So long as they are not separated.*' [After reproducing the discussion regarding *Āpastamba's* declaration]—It is for these reasons that in the performance of works of philanthropy,—which do not require the Consecrated Fire,—the liability of the Husband and Wife is *not joint*. That is the reason why, even in the absence of the Wife, the man is entitled to perform such acts; and there is nothing to preclude even an *unmarried* man from performing such acts—(*Dvaitanirṇaya*, pp. 39-40).

(*a*) In view of the assertion of *Āpastamba* to the effect that 'no division is possible between the Husband and the Wife, as also in regard to the rewards of Merit and Demerit',—there can be no division between Husband and Wife;—and (*b*) in the section dealing with the 'Wife', the Wife's ownership has been restricted solely to the property of her living Husband;—and (*c*) there is the declaration of the *Shrāddhaviveka* that 'Property is common between Husband and Wife'—where 'Common' means *belonging to both*.—Though all this is so, yet the assertion of *Yājñavalkya*—that 'if the man is making an equal division, he should make the Wives *equal sharers*'—clearly indicates that when the man is dividing his property among his Sons, he has to assign a share to his (Sonless) Wife also; and it is in this sense that the present text has mentioned 'Husband and Wife'.—Some people have held that—'What *Āpastamba* has asserted relates only to the liability to such acts as can be performed with Consecrated Fire only'.—This is not right. In fact, the *denial* that 'there is no division between Husband and Wife' presupposes a corresponding *affirmation*; which indicates the ownership of both Husband and Wife over the same property. Otherwise, if the ownership of *both* were not there, there could be no possibility of *Division*, and hence there could be no denial of such possibility.—What is meant by *Manu's* text—to the effect that 'the Slave, the Son and the *Wife* have no property',—is that these persons are not free to spend without the permission of their Master—(*Smṛtitattva* II, pp. 179-180).

What is meant is that *Suretyship* and other transactions among undivided Coparceners have been forbidden,—and hence disputes among them should be settled by persons other than themselves.—As between Husband and Wife, it is only in matters relating to *Shrauta and Smārta* rites, that their title has been declared to be *joint*; in regard to *Property*, therefore, division is certainly possible between them; a denial of this would be contrary to many texts—(*Vibhāgasāra* 20.1-1).

* '*Vaṇikpatham*'—Trade—(*Aparārka*, p. 757).

'*Kusīdam*'—lending money on interest.—'*Vaṇikpatham*'—Trade.—'*Parasparam*' —goes with both '*Kusīdam*' and '*Vaṇikpatham*'—(*Smṛtichandrikā*, p. 719).

'*Parasparam*'—independently of one another, not conjointly.—The term '*pṛthak*' is to be construed with the second line also. [The meaning of the text, according to this explanation, would be this—'Those who keep their income, expenditure and wealth separate, and carry on separate money-lending and trade independently of one another, not jointly, are *divided*']—(*Vivādaratnākara*, p. 608).

In the absence of witnesses and other proofs, partition is to be regarded as proved by such fact as money-lending, trade and so forth—(*Parāsharamādhava*, p. 386).

The compound '*pṛthagāyavyayadhanāḥ*' is to be expounded as 'those whose *income*, *expenditure* and *wealth* are separate'.—'*Kusīdam*'—money-lending on interest.—'*Vaṇikpatham*'—Trade.—'*Parasparam*'—one Brother being the *Creditor*, another *Debtor*, one sells and the other buys; and so forth.—On the strength of these facts, which cannot be explained except on the basis of partition, partition is to be regarded as established—(*Vīramitrodaya*, p. 717).

'*Vaṇikpatham*'—trades [for '*dhana*', this work adopts the reading '*dhāna*', which means *mortgaging*]—(*Vyavahāramayūkha*, p. 135).

Those who carry on these transactions among themselves should be regarded as *divided*; because such transactions are the only effects of *Division* (Separation)—(*Vibhāgasāra* 20.1–5).

business transactions, and while properly fulfilling all spiritual and temporal functions, are not in agreement in relation to business-dealings.'

That is, those who have become 'separated', and have not become 'reunited', (1) their 'performance of religious duties', in the shape of the *Vaishvadēva* and other offerings,—(2) 'business-transactions', in the shape of *money-lending* and the like,—(3) 'temporal functions', in the shape of supporting the family, etc.,—(4) 'spiritual functions', in the shape of service and devotion,—all this they become entitled to do separately.*

The same authority describes the effect of the said 'Division' (Separation) in the following words—

[1096] 'In case they would wish to give away or sell off their own respective shares, they would be free to do all this; as they are masters of their own property'—(*Nārada* 13.43).†

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* No significance attaches to the qualification 'descendants of one man', or to the adjective 'several'.—'*Pṛthagdharmāḥ*'—performing their Five Great Sacrifices and other acts separately.—'*Pṛthakkriyāḥ*'—carrying on money-lending and other kinds of business separately.—'*Pṛthakkarma, etc.*'—[this is the reading adopted by all the Digests, excepts the *Chintāmaṇi* which alone reads '*Samyakkarma, etc.*']—having separate arrangements for the care of children, for agricultural operations and for other kinds of business.—'*Na chēt, etc.*'—if they are not operating jointly—(*Vivādaratnākara*, pp. 608-609).

The meaning is as follows:—If there are many descendants of one man, separated in several ways,—e.g. (*a*) performing the *Agnihotra* and other religious acts requiring the expenditure of wealth, separately; (*b*) carrying on agricultural and other temporal business by means of their separated wealth; (*c*) possessing separate utensils and other implements of work; (*d*) they are not in agreement in regard to business-dealings, and each goes on with his business regardless of the others;—they are independent masters of their own property—(*Smṛtichandrikā*, pp. 715-716).

There are several Brothers born of the same person who are 'divided', this being understood (according to some).—'*Pṛthagdharmāḥ*'—whose *dharma*, in the shape of the worshipping of *Dēvas* and *Pitṛs* is carried on separately; '*dharma*' does not stand for the *Agnihotra* and the like, as these are performed separately even by Brothers who are *not divided*.—'*Pṛthakkriyāḥ*'—this refers to the ordinary temporal acts.—'*Pṛthakkarmaguṇopētāḥ*'—those who have separate implements (*guṇas*) of such acts (*karma*) as pounding and the like; i.e. implements like pestle, mortar, stone-slabs and so forth.—'*Na chēt, etc.*'—they do not act with each other's consent—(*Vīramitrodaya*, pp. 713-714).

The meaning is as follows;—If the Brothers are so circumstanced that—(*a*) without each other's consent, they carry on religious performances involving the expenditure of wealth, (*b*) carry on such business as agriculture and the like which require separate capital, (*c*) they make separate profits and losses, and (*d*) they are opposed to each other in regard to social and village matters, then they should be regarded as 'divided' (separate)—(*Aparārka*, p. 757).

Several Brothers born of one Father, when *separated*—(*a*) may perform such acts of public utility as cost money, even without each other's consent; (*b*) may carry on agriculture and such other business which require capital;—(*c*) may possess separate pestles, mortars and other household-implements; (*d*) they may ignore each other in carrying on their business, if they are not in agreement—(*Parāsharamādhava*, p. 384).

'*Dharma*'—the Five Great Sacrifices.—'*Kriyā*'—trading and other secular business.—'*Karmaguṇa*'—working implements, household-utensils, etc.—when these are separate, it indicates that the Brothers have become 'divided'.

† Here sale and other transactions have been sanctioned in a general way. The statement of the reason—'as they are masters of their own property'—implies that this refers to immoveable property also; as, otherwise, this statement would be meaningless—(*Vīramitrodaya*, p. 587).—If these men wish to give away or sell—or pledge or mortgage—their shares, they can do as they wish. If the separated Brothers give their consent to these transactions, the business proceeds smoothly; but even if they do not give their consent, that does not vitiate the transaction. The reason for this is—'they are masters of their own property'.—That is, mutual

SECTION (Q)—RELATIVE IMPORTANCE AND AUTHORITY OF TRANSACTIONS

Says *Yājñavalkya* (2.23)—

[1097] 'In all disputes greater authority attaches to the later transaction.—In the case of pledge, gifts and sales, however, it is the earlier one that is stronger.'*

The 'transactions' meant here (to be compared) are those belonging to the same category.

It is for this reason that *Bṛhaspati* has declared as follows:—

[1098] 'Having borrowed money at the rate of 2 per cent, if the Debtor subsequently admits the rate of 5 per cent,—then this latter rate of interest shall stand, as it was the latter to be adopted.'

That is, having borrowed money at the rate of 2 per cent, if the Debtor, on account of the exigencies of his business, has accepted the rate of 5 per cent, —then the later transaction is the more authoritative one. The two transactions in this case belong to the same category of 'Interest-rate'; and hence naturally the greater authority attaches to the later transaction.

There are exceptions to this general rule: In the cases of pledge and the rest, it is the other way. For instance, when an article has been pledged for a second time, or given away for a second time, or sold for a second time,—all these *later* transactions—pledge, gift and sale—shall be set aside.—This is only by way of illustration; if a thing is *sold* after it has been *given away*, the sale has to be set aside, on the ground that it was done by one who had no *ownership* over it.—It is for this reason that we have the following declaration—

[1099] 'If a sale or gift has been made by one who is not the rightful owner of the thing concerned, it should be annulled: such is the rule of business' —(*Manu* 8.199).

[*Vide* Text No. 173 above.]

Bṛhaspati—

[1100] 'In a case where there have been several successive transactions, each succeeding one annuls the preceding one; hence it is the last transaction which, being stronger than the previous ones, is really effective.'—

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consent is necessary only in regard to joint property, not in regard to what belongs to any one person exclusively—(*Vīramitrodaya*, pp. 713-714).

'Divided' Brothers may or may not give away or sell their own shares, just as they please; because, being separated, they are masters of their own property—(*Parāsharamādhava*, p. 384).

The meaning is that the Brothers, thus divided, can give away or sell their property without each other's consent—(*Vyavahāramayūkha*, p. 136).

* For example, if the Defendant succeeds in proving the authenticity of repayment,—which is later than the Lending,—he wins the suit; even though the Plaintiff may have succeeded in proving the Lending. That is, the Plaintiff sues the Defendant for the recovery of a Loan,—the Defendant answers that he has already repaid it;—both parties succeed in proving their allegations,—the decree lies with the Defendant—(*Mitākṣarā*).—*Aparārka* cites a different example: The Creditor advanced a Loan, in the first instance, on interest at the rate of 5 per cent, but subsequently he reduces it to 2 per cent;—his claim, if decreed, is in accordance with this latter rate.—*Vishvarūpa's* interpretation of these two rules is entirely different; He proposes two explanations—(1)—(*a*) In all disputes, the *last*-mentioned proof—that is *ordeal* is the strongest; (*b*) in the matter of mortgage, etc. the *first* —i.e. documentary evidence—is the strongest;—or (2)—(*a*) among conflicting documents, the latest is the most authoritative; (*b*) in the case of mortgage, etc. the earliest is the most authoritative.

[1101] 'If having placed an article in *Deposit,* one *pledges* the same subsequently,—or having pledged it, he places it in deposit subsequently, —or sells it,—in all these cases it is the later transaction that prevails.'

The term '*bandha*' stands here for transaction. Hence what is meant is that the preceding transaction is *weaker* and the succeeding one *stronger.* This rule is illustrated in the second text.—The later Pledge annuls the previous Deposit; and the later Sale annuls the previous Deposit.—'*Deposit*' consists in merely *entrusting* (the article to another man), while 'Pledge' is placing it under his influence; hence the latter is 'stronger'; while as compared to *Pledge,* the transaction of *Sale* is still more authoritative; as it consists of the entire cessation of the ownership (of the previous holder); while Mortgage or Pledge does not bring about the *ownership* (of the Pledgee or the Mortgagee); hence this is not so 'effectively authoritative'. Hence if the *Selling,* which tends to destroy the previous ownership, is done again (after the previous sale of the same thing),—it is the previous *sale* that remains effective; and the reason for this lies in the fact that the creation of the absolute ownership (by the later sale) is obstructed by the already-existing absolute ownership brought about by the previous sale.—Similarly in the case of *repledging* of a thing which has been already pledged. As between the pledging that does *not* set aside the previous ownership, and the pledging that does set aside the previous ownership, the latter is the more effective.—Such is the sense of the texts.

This is the correct explanation; and the custom too is the same—says the *Ratnākara* also.

In regard to a case where the interval between the transactions of Pledging, Selling and Giving away is very small,—and it cannot be ascertained which one came before the other,—the same authority says as follows:—

[1102] 'If the *Selling, Pledging* and the *Acceptance of gift* have all been done on the same day,—and all the three are under dispute, what shall be the decision? The conclusion on this point is that all the three transactions are valid; and the three parties concerned shall divide the property among themselves, in proportion to their respective shares; the first two in the ratio of their respective claims and the Donee receiving the full third part.'

That is, the Pledgee, the Purchaser and the Donee shall divide the property concerned among themselves, in equal shares.—The opinion of the *Halāyudha* however is that in such a case, the claims of the Pledgee are the weakest, as the transaction of Pledging is the weakest of the lot.

CHAPTER XVIII

Gambling and Betting

Says *Manu* (9.223)—

[1103] 'That which is played with inanimate things is *Gambling*, while that which is played with animate things is *Betting*.'

'*Inanimate things*'—e.g. the Dice.
Bṛhaspati (26.3)—

[1104] 'When Birds, Rams, Bulls or other animals are made to fight against one another,—after a wager has been laid on them,—it is called *Betting*.'

Manu (9.221 *et seq.*)—

[1105] 'Gambling and Betting are public *Theft* and should be suppressed. One who does Gambling or Betting, or helps others to do it,—all these the King shall extirpate; as also *Shūdras* masquerading as Twice-born men.'*

Kātyāyana—

[1106] 'One should never have recourse to Gambling, as it feeds on anger and greed, leads to evil, is cruel and is destructive of people's wealth. Inasmuch as quarrel is produced by Gambling, and it is like poison issuing from the mouth of the snake,—the King should suppress this potent source of evil in the kingdom.'

Bṛhaspati (26.1)—

[1107] 'Gambling has been forbidden by *Manu*, because it is subversive of truth, honesty and wealth. It has been permitted by others, under such conditions as may bring revenue to the King. It shall be carried on under the supervision of the Superintendent of Gaming Houses; as it helps in the detection of thieves.—Such is the Law relating to Gambling and Betting with animate things.'

That is, Gambling has been forbidden by *Manu*, but has been permitted by others, for the purpose of detecting thieves; but even so, it should be carried on only under the supervision of the Superintendent of Gaming Houses, appointed by the King.
Yājñavalkya (2.203)—

[1108] 'Inasmuch as it helps in the detection of thieves, Gambling should be carried on under the supervision of an officer. This is to be understood as the rule regarding Gambling and Betting with animals.'

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* According to *Aparārka* and *Mitākṣarā* (on *Yājña.* 2.202), and *Vīramitrodaya*, p. 721,—all this refers to such Gambling and Betting as are not authorised by the King, and not supervised by the King's officers specially appointed for the purpose; —and also to those that are accompanied by fraud and cheating.

'*Ēkamukham*'—i.e. supervised by the King's officer in the person of the Superintendent of Gaming Houses.*

Bṛhaspati (26.4)—

[1109] 'When any one is defeated in a prize fight (Betting) between two animals, the owner of that animal shall pay the Bet that had been laid upon it.'

Bṛhaspati (26.5)—

[1110] 'The Wager (Bet) shall be laid openly; and persons cheating at Gambling shall be banished.'

'*Glaha*' is the Gambling wager; it should be made openly, in public.

Nārada—

[1111] 'If a man gambles without authorisation by the King, he shall not get his stake, and he shall be punished.'—

[1112] 'What has been staked in joke,—or without knowledge of the King—shall not be received by the winner; and he shall be punished.—Or, it may be permitted, and he may obtain the stake, but only once.'

[1113] 'The Superintendent may accept from the gamblers small gifts of food and drink; but avoid repetition of the same.'

'*Niyama*' here stands for *Punishment.*—

[1114] 'Those wicked men who use false dice at games, or rob the King of his dues, or cheat by making false reckonings,—are called *Cheats*; and they deserve to be punished.'

Viṣṇu—

[1115] 'Those who gamble with false dice should have their hands cut off; those who cheat at Gambling shall have their two fingers cut off.'

'*Upadhi*' is *cheating.*—'*Sandamsha*'—the two fingers—the Thumb and the Index finger.

Yājñavalkya (2.202)—

[1116] 'Those who play with false dice or cheat at the game should be branded and banished.' †

Whether in a particular case, there shall be *fine*, or *branding* or *cutting off of two fingers* or *cutting off of hands* or *banishment* will depend upon the seriousness or otherwise of the offence of the cheats at Gambling.

Kātyāyana—

[1117] 'If one does not act up to the rules laid down by the King,—that wicked man should be despised and punished, as disobeying the King's Commands.'

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* The Superintendent of Gaming Houses shall have Gambling carried on at one place, for the purpose of detecting men of bad livelihood. For Gambling in an unauthorised place, there shall be a fine of 12 *Paṇas*—(*Arthashāstra* 3.20).

† '*Branded*'—with the sign of the dog's foot—(*Vīramitrodaya*, p. 721).

SUPPLEMENTARY CHAPTER

Dealing with Punishments

Says Manu (7.14 *et seq.*)—

[1118] 'For the King's sake, the Lord created Punishment, which is the *Law* born of the Lord Himself, an incarnation of divine glory and the protector of all creatures:—

'It is through fear of him that all beings, moveable as well as immoveable, go to subserve the experiences (of men), and do not swerve from their duties.—

'To men who act unlawfully, he should mete it out appropriately, having carefully considered the time and place, as also the strength and leaning.—

'That Punishment is the *King*, the *Spirit*; that is the *Leader* and the *Ruler*; and that has been declared to be the *surety* for the Law of the Four Stages.—

'Punishment governs all creatures; Punishment alone protects them; Punishment lies awake while all are asleep; the wise ones regard Punishment as the *Law* itself.'

Again—

[1119] 'Where the dark-complexioned and red-eyed Punishment stalks about destroying sins,—there the people are not misled,—provided that the Ruler discerns rightly'—(*Manu* 7.25).

'*Tadartham*'—for his sake.—'*Dharmam*'—Law, i.e. the maintainer of Law; the identification is meant to indicate great regard.—'*Brahmatējomayan*' —incarnation of the glory of primeval *Hiraṇyagarbha*. This also is purely eulogistic; the object of which is God Himself.—'*Rājā*' (King)—so called because of his *keeping the people happy* (*prajāranjanāt*).—'*Ourasaḥ*' (Spirit)—because the Supreme Being resides within the heart of all beings.—'*Nētā*', (Leader)—the Governor.—'*Shāsitā*'—Ruler; one who keeps people within the sphere of their appointed duties.—'*Jāgarti*'—(lies awake)—so called because it serves to suppress thieves and other evil-doers, in the way in which men fully awake do.—*Wherever the dark-complexioned and red-eyed Punishment*—i.e. the Presiding Deity of Punishment—is functioning, there the people prosper;—provided that the *Ruler*—the person Governing—discerns rightly.

Again—

[1120] 'Punishment can be administered by one who is pure and true to his word, and acts according to the Law, has good assistants and is wise' —(*Manu* 7.31).

'They declare that King to be the just Governor who is truthful of speech, acts after due consideration, is wise and knows the essence of Virtue, Pleasure and Wealth'—(7.36).

'Punishment cannot be justly administered by one who has no assistant, or who is demented, or avaricious, of undisciplined mind, or addicted to sense-objects'—(7.30).

'The King who metes out Punishment in the proper manner prospers in respect of his three aims; he who is blinded by love, unfair or mean is destroyed by that same Punishment'—(7.27).

'Punishment, which is a tremendous force, hard to be controlled by persons with undisciplined minds, destroys the King who has swerved from duty, along with his relations'—(7.28).

'Then it will afflict his forts and the kingdom, the whole world along with animate and inanimate things,—as also the sages and the deities inhabiting the heavenly regions'—(7.29).

'When meted out properly after due investigation, it makes all people happy; but when meted out without any investigation, it destroys all things'—(7.19).

'*Samīkṣyakārī*', '*acting after due consideration*'—i.e. who acts after fully taking into consideration the exigencies of time and place.—'*Mūḍhēna*'—'demented'; i.e. devoid of imagination.—'*Akṛtabuddhi*'—of undisciplined mind', i.e. who has not studied the scriptures.—'*Kāmāturā*', 'blinded by love', —i.e. doing what he wishes.—'*Viṣama*', 'unfair'—i.e. behaving wrongly, on account of partiality.—'*Sumahat-tejāḥ*', 'tremendous force',—i.e. by reason of its sharpness.—'*Tataḥ*', 'then',—i.e. after destroying the King along with his relations.—'*Sudhṛtaḥ*', 'meted out properly',—i.e. administered fairly and justly.

Again—

[1121] 'If the King did not untiringly mete out Punishment to those who deserve it, the strong would roast the weaker, like fish on the spit;—the crow would eat the sacrificial cake; and the dog lick the offering materials; the rights of all ownership would cease to exist and there would be a commixture among the high and low'—(*Manu* 7.20-21).

'*Daṇḍyēṣu*'—deserving punishment.—'*Adharottaram*'—i.e. the conditions of superior and inferior would become reversed.

Again—

[1122] 'It is by Punishment that all people are kept under control; for an absolutely guileless man is hard to find. It is through fear of Punishment that the world subserves the experiences of man'—(7.22).

'It is only when pressed by Punishment that *Dēvas*, *Dānavas*, *Gandharvas*, *Rākṣasas*, Birds and Reptiles subserve the experiences of others'—(7.23).

'All castes would become corrupt, all barriers would be broken through, and there would be disruption in all spheres,—if there were mistakes in regard to Punishment'—(7.24).

'To the King who protects his people, accrues the sixth part of the spiritual merit of all beings; another sixth part of their demerit also accrues to him if he fails to protect them'—(8.304).

'When any one reads the Veda, when any one performs a sacrifice, when any one makes gifts, when any one worships,—to the sixth part of each of these the King becomes entitled,—by virtue of his properly protecting the people—(8.305).

'The King who, according to the Law, protects all creatures and strikes those who deserve to be struck,—offers, day by day, sacrifices at which hundreds of thousands are given away as gifts'—(8.306).

'*Tadartham*' (in Text 1118)—for the purposes of the King as described in the previous texts of *Manu*.—'*Samīkṣyakāriṇam*' (in *Manu* 7.26)—what is meant is that if Punishment is administered with due deliberation, it tends to welfare; otherwise, it brings calamity to the administrator.—'*Vibhrama*' (*Manu* 7.24)—'*mistakes*, in the shape of punishing wrongly or not punishing at all.—'*Rājā*'—the King;—thus what is meant is that all this happens to the King who administers thus.—'*Kāmāturā*' (blinded by love)—(*Manu* 7.27)—qualifies the person administering Punishment.—'*Bāndhava*', 'Relations'—here stands for the *Son*.

Thus then—

[1123] 'That King in whose realm there is no thief, no adulterer, no defamer, no criminal, no assaulter,—attains the *Regions of Indra*'—(*Manu* 8.386).

'The suppression of these five in his own dominions secures to the King paramount sovereignty among his peers and fame in the world'—(8.387).

Thus ends the *Vivādachintāmaṇi*

by

Mahāmahopādhyāya Shrī Vāchaspati Mishra.

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